

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 09 CR 660 (S-1) (JG)

:

-against-

:

United States Courthouse
Brooklyn, New York

BETIM KAZIU, also known as :
"Abdurrahman al Albani," :
"Abdul Wahab al Albani" :
and "Sayf-Ul-Islam," :

Defendant. : June 30, 2011
9:30 o'clock a.m.

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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE JOHN GLEESON
UNITED STATES DISTRICT JUDGE, and a jury.

APPEARANCES:

For the Government:

LORETTA E. LYNCH
United States Attorney
BY: SHREVE ARIAIL
SETH DuCHARME
ALI KAZEMI
Assistant United States Attorneys
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Brooklyn, New York

For the Defendant:

HENRY J. STEINGLASS, ESQ.
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New York, NY 10007

1 APPEARANCES CONTINUED:

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6 New York, NY 10013

7 BY: DAVID STERN, ESQ.

8 JOSHUA L. DRATEL, ESQ.
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11 Court Reporter:

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15 (718) 613-2538

16 Proceedings recorded by mechanical stenography, transcript
17 produced by computer-aided transcription.

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1 (The following occurred in the absence of the jury.)

2 THE COURT: Good morning.

3 Okay. What's up?

4 MR. ARIAIL: Your Honor, just one small issue I
5 wanted to bring to the Court's attention. I should have done
6 it yesterday.

7 While I was doing my direct and when the AV on the
8 podium wasn't working correctly, I just want to bring to the
9 Court's attention that juror number five tried to speak to me,
10 I think or two times, and tried to offer to help. I looked
11 away. I just wanted to let you know that that happened.

12 I think one of the other jurors may have admonished
13 him not to talk to me.

14 THE COURT: Okay. Thank you.

15 MR. STERN: No. That doesn't have -- that's fine.

16 Judge, I have been promising you to respond to the
17 government's objections to these. I just haven't had time to
18 do it. So what I would like you to do, if you can --

19 THE COURT: You are referring to depositions?

20 MR. STERN: -- is to look at them. To the extent
21 you need or want input, I am glad to do that. I think it's
22 apparent that I disagree with the government. It is not an
23 admission that they are right. It is just an admission of my
24 own inability to get to it. If you want to look and make sure
25 these are from the right copies? You have them already, I

1 take it?

2 THE COURT: I don't know.

3 MR. STERN: I am going to guess that you have them.

4 If you don't --

5 THE COURT: Do I have them?

6 THE LAW CLERK: Yes.

7 THE COURT: I have them.

8 MR. STERN: Okay.

9 THE COURT: They are within my purview.

10 MR. STERN: Yes. I think the government is going to
11 decide maybe by the end of today if they want to use Sujehb
12 Mazllami if they want to use that one, that's the one that I
13 think needs to be done first so I can get edited. If they
14 don't, then one is out of the way and you just have three to
15 look at it.

16 THE COURT: Thank you.

17 MR. DuCHARME: One other quick thing, Your Honor.
18 We had some discussion at side bar yesterday with respect to a
19 particular video clip that had a reference to body parts. The
20 Court reserved decision on that. But you expressed it might
21 have been helpful for you to look at that particular clip.

22 I broke out that particular clip. It's two minutes
23 long. I can hand up a copy of that. If you have time to look
24 at it before our expert testifies, which would be no sooner
25 than the very end of today or tomorrow morning, if you would

1 like to see it.

2 THE COURT: Okay.

3 MR. DuCHARME: Then if you have questions, Your
4 Honor, I can explain to you in what context we intend to
5 elicit that. In other words, it relates to a document
6 recovered from the computer in which the defendant
7 essentially, we will allege, transcribes this particular
8 portion and we will argue essentially adopts it.

9 THE COURT: I understand.

10 Provide it to Alicyn. I will take a look at it.

11 Thank you for doing that.

12 MR. DuCHARME: You are welcome.

13 MR. DRATEL: One additional issue? May I have a
14 moment?

15 THE COURT: Okay.

16 MR. STEINGLASS: Your Honor, if I may? I am not
17 totally clear what is being referred to but I believe there is
18 a video that's being referred to and I understand they were
19 transcribed to refer to certain words, which I -- I know --
20 there is a video also?

21 MR. DuCHARME: That's what I have handed up on a
22 disk.

23 MR. STEINGLASS: I see. All right.

24 Thank you.

25 MR. DuCHARME: And provided to you as well.

1 MR. STEINGLASS: Previously?

2 MR. DuCHARME: I just handed a copy.

3 MR. STERN: I have it.

4 MR. STEINGLASS: Oh.

5 MR. DRATEL: Your Honor, Mr. Kaziu would like to
6 speak to Your Honor. He decided to do that. I would just ask
7 that it be done in camera ex parte, if -- it's a counsel
8 oriented issue.

9 THE COURT: Maybe. We are not going to do it now.

10 MR. DRATEL: Okay.

11 THE COURT: We will do it at a break.

12 MR. DRATEL: Okay.

13 THE COURT: What's it about? General subject
14 matter?

15 MR. DRATEL: Counsel issues.

16 THE COURT: Okay. I am not insensitive to them.
17 You know that. But as I mentioned yesterday, I like to
18 reinforce the importance to the jury of getting started on
19 time. So we will do it at the break.

20 MR. DRATEL: Thank you, Your Honor.

21 THE COURT: Ilene, bring in the jury, please.

22 MR. ARIAIL: Shall we get the witness first, Your
23 Honor?

24 THE COURT: Please.

25 (Witness present.)

1 THE COURT: Have a seat.

2 We will all stand when the jury comes in.

3 (Jury present.)

4 THE COURT: Good morning, everybody.

5 Welcome back.

6 Please be seated.

7 We are ready to resume.

8 MR. ARIAIL: May I proceed, Your Honor.

9 THE COURT: Yes, you may.

10 MR. ARIAIL: Thank you.

11 (Continued on next page.)

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Hadzovic - direct - Ariail

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1 S E L E J M A H H A D Z O V I C ,

2 called as a witness, having been previously duly

3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. ARIAIL:

6 Q Good morning, Mr. Hadzovic.

7 A Good morning.

8 Q I'd ask you if you could keep your voice up when you
9 testify.

10 A Okay.

11 Q Mr. Hadzovic, yesterday you testified about your plans to
12 go to Somalia to fight jihad.

13 Did Mr. Kaziu tell you what his intentions were in
14 Somalia?

15 A Yes.

16 Q What did he tell you?

17 A Both of our intentions were to go to Somalia, join up
18 with Al Shabaab and fight in jihad.

19 Q What specifically though did Mr. Kaziu tell you?

20 A Specifically, that -- that we wanted to go fight and die
21 in jihad.

22 Q Mr. Hadzovic, you keep using "we." I am asking you what
23 did Mr. Kaziu specifically tell you about what he wanted to do
24 in Somalia?

25 A To fight and die in jihad.

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Hadzovic - direct - Ariail

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1 Q Now, if you got to Somalia, what did you expect you
2 would -- who did you expect you would be fighting?

3 A The Somalian government.

4 Q What sorts of weaponry did you expect to fight with in
5 Somalia?

6 A Weapons like assault rifles, RPGs, machine guns,
7 grenades, things of that sort.

8 Q Did you expect that if you fought in Somalia, that you
9 would die?

10 A Yes.

11 Q Now, we talked a lot about Al Shabaab and Ahmed. I want
12 to turn back to Armend Kalanderi for a minute.

13 How again is it that you met Armand Kalanderi?

14 A Through Sead Jasavic.

15 Q How again is it that you met Sead Jasavic?

16 A When I went to Montenegro in 2007.

17 Q Where did you meet Sead Jasavic in Montenegro?

18 A He was the Iman at the mosque.

19 Q How is it that Sead Jasavic got you in touch with Armend
20 Kalanderi?

21 A He used to study with Armend Kalanderi like a few years
22 back.

23 Q How is it though specifically he got you in touch with
24 Armend Kalanderi?

25 A I spoke with Sead on MSN and I told him that we were in

Hadzovic - direct - Ariail

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1 Egypt and we didn't know much about it and he said that I know
2 a person there that I used to study with and maybe he can help
3 you. So he gave me his email address.

4 Q What did you do?

5 A I contacted Armend.

6 Q And then what did you do?

7 A Then we spoke and we decided to meet up at the Selaj
8 Mall.

9 Q What's the Selaj Mall?

10 A It's the mall in Nasir City, Cairo.

11 Q When you met up with Armend Kalanderi the first time,
12 were you alone or with someone else?

13 A It was me and Betim.

14 Q Did Mr. Kalanderi, Armend Kalanderi, does he speak
15 English?

16 A From -- from what I remember he spoke very, very little
17 English.

18 Q Did he speak other languages?

19 A Yes, he did.

20 Q What languages did he speak?

21 A He spoke Serbo-Croatian and he also spoke Albanian.

22 Q How is it that you -- well, first off, did you and
23 Mr. Kaziu converse with Mr. Kalanderi?

24 A Yes, we did.

25 Q How is it that you were able to converse with

Hadzovic - direct - Ariail

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1 Mr. Kalanderi?

2 A I spoke to Armend in Serbo-Croatian and Betim spoke to
3 him in Albanian.

4 Q Did Armend Kalanderi tell you what he was doing in Egypt?

5 A He was studying.

6 Q What was he studying?

7 A He studied at the school called Elrik Recude (ph).

8 Q What was he studying at that school, if you know?

9 A Islam, like the tenets of Islam.

10 Q Did Armend Kalanderi tell you what he did for a living?

11 MR. STERN: Objection.

12 THE COURT: Overruled.

13 A Yes. He said that he was -- like he used to preach and
14 call people to Islam in Kosovo Prizren.

15 Q Did he tell you whether or not he was an Imam in Kosovo
16 Prizren?

17 A No, he didn't tell me he was an Imam.

18 Q To the best of your recollection, can you please recount
19 the conversation that you had with Mr. Kaziu and Mr. Kalanderi
20 the first time you met him at the Selaj Mall?

21 A Yes.

22 We went to the Selaj Mall to meet up with Armend.

23 We invited Armend back to our house and he came and we offered
24 him drinks and sweets and we spoke to him and he spoke to us.

25 We give him greetings. He gave us back, discussed how he was

Hadzovic - direct - Ariail

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1 doing. We got to know one another. He offered to help us
2 around Cairo to show us like stores, where to go to buy like
3 food that's not too expensive and like house appliances.

4 Q All right. Did you and Mr. Kaziu's relationship with
5 Armend Kalanderi develop?

6 A Yes, it did.

7 Q How did it develop?

8 A Well, he basically like took us under his wing. He was
9 like a guardian to us.

10 Q After you met him at the Selaj Mall, did you meet him
11 again?

12 A Yes, I did.

13 Q Where did you meet him again?

14 A We met many times after that. He bring us like -- he
15 brought us to Giza where the Pyramids are and we went also
16 horseback riding in the desert.

17 Q Other than horseback riding in the desert with
18 Mr. Kalanderi, did you have other meetings with him?

19 A He also brang us to City Stars. That's -- it's a huge
20 mall where you can buy like things that you -- that are pretty
21 cheap compared to other stores.

22 Q Do you know --

23 A I'm sorry.

24 Q That's all right.

25 Did you go -- ever go to his house?

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Hadzovic - direct - Ariail

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1 A Yes.

2 Q When is it that you went to his house?

3 A We went more than one time. The first time we -- he
4 invited us for dinner for like something that we were usually
5 used to eating back home, like family dinners. It is called
6 besout. It's like a stew. We went over there and we sat
7 down. He greeted us and we sat down and we ate and we spoke a
8 lot.

9 Q During your initial conversations with Armend Kalanderi,
10 did you or Mr. Kaziu discuss jihad?

11 A No, we didn't.

12 Q When is it that you specifically began talking with
13 Armend Kalanderi about your and Mr. Kaziu's plans to fight
14 jihad?

15 A I believe it was the second meeting, the second time he
16 invited us to his house.

17 Q At that -- who was at that meeting?

18 A I believe it was just me, Betim and Armend.

19 Q Prior to going to dinner at Armend's house the second
20 time, did you and Mr. Kaziu have conversations?

21 A Yes, we did.

22 Q What did you talk about?

23 A We spoke about whether we could ask Armend in helping us
24 to get to places like Afghanistan and Pakistan.

25 Q During those conversations, did you talk about why it is

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Hadzovic - direct - Ariail

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1 that you thought -- well, strike that.

2 At this point had you already been talking to Ahmed
3 about getting to Somalia?

4 A No, I dont think so.

5 Q Can you tell the jury what happened the second time you
6 and Mr. Kaziu went to Armend's house?

7 Is it a house or apartment? Sorry.

8 A It is an apartment.

9 Q Can you tell the jury what happened the second time you
10 went to his apartment?

11 A Yes.

12 Me and Betim went to his apartment, maybe I think
13 two weeks after the first dinner. He invited us again. We
14 went to his house. We walked up the stairs. He lived like on
15 the third floor. He invited us in. He said ahlan, which is
16 welcome, and we were inside. We went into his room and he
17 brang out the dinner and we ate and we spoke and laughed.

18 Then we brought up the issue of jihad, if he could
19 first -- about Somalia, Betim brang up Somalia and Armend said
20 that he wasn't able to help with Somalia but he knew a guy
21 that was coming in, I think he said three weeks, that would be
22 able to help us get to Pakistan.

23 Q Now, Mr. Hadzovic, how did you react, if at all, when
24 Betim brought up Somalia with Armend?

25 A With Somalia, I was a little bit surprised because I knew

Hadzovic - direct - Ariail

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1 Armend isn't Somalian. I thought he had no knowledge of
2 Somalia whatsoever. But Armend replied that he couldn't help
3 with Somalia.

4 Q Prior to having those conversations about jihad with
5 Armend, did you take any precautions?

6 A As usual, I used to take the battery and SIM card out of
7 my phone.

8 Q At that meeting, did you take those precautions?

9 A Yes, I did.

10 Q Did Mr. Kaziu take those precautions?

11 A I don't know if Betim had a phone with him.

12 Q Were you concerned about the fact that Betim brought up
13 Somalia with Armend Kalanderi?

14 A At first. But then I realized it's Armend and we know
15 him well.

16 Q Why was it though that you were concerned?

17 A Because I figured that, you know, Somalia is something
18 completely different from what Armend can actually help us
19 with.

20 Q Why is it though that you wouldn't want to talk with
21 Armend about Somalia?

22 A Because that was a whole other plan, something we didn't
23 discuss about talking with Armend.

24 Q What was the problem with that?

25 A That's Armend couldn't help us. I realized that I -- I

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Hadzovic - direct - Ariail

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1 believed that he couldn't help us with Somalia whatsoever.

2 Q After he told you that he couldn't help you with Somalia,
3 what happened?

4 A We asked if he could help us in getting to Pakistan.

5 Q And for what purpose?

6 A To go to Pakistan and join up with Al Qaeda and Taliban
7 and receive training, but ultimately going to Afghanistan.

8 Q Did you specifically tell Armend Kalanderi that?

9 A Yes.

10 Q How did Armend Kalanderi react when you brought that up?

11 A He offered to help us.

12 Q The guy that he offered to put you in touch with, what
13 was this guy going to do for you and Mr. Kaziu?

14 A He was supposed to get us to Pakistan because it was
15 hard, like if you didn't know anybody in Pakistan and you
16 weren't allowed to go there, but he was seen as some type of
17 like bigshot.

18 Q Did you and Mr. Kaziu talk about specific places that you
19 would go to in Pakistan?

20 A Yes.

21 Q What places did you talk about?

22 A When we got to Pakistan, we spoke about going to
23 Waziristan, which was a Taliban stronghold. In Waziristan we
24 were going to receive training, both physical and combat
25 training. From there, move on to Afghanistan.

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Hadzovic - direct - Ariail

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1 Q How was it that you were going -- where was it that you
2 would fly into in Pakistan?

3 A I believe Lahore was the city.

4 Q How was it that you intended to get across the border
5 from Pakistan to Afghanistan?

6 A Through -- there is a place called Peshawar. It borders
7 with Afghanistan.

8 MR. ARIAIL: Your Honor, if I may publish to the
9 witness 907?

10 THE COURT: Sure. Go right ahead.

11 MR. ARIAIL: On the Elmo.

12 I offer 907 on consent.

13 THE COURT: Received.

14 (Marked.)

15 Q Mr. Hadzovic, what are we looking at here?

16 A A map of Afghanistan and Pakistan.

17 Q Could you point out on the map where is Lahore?

18 A Lahore is right here.

19 Q All right. The area that you described, Waziristan,
20 where is Waziristan?

21 A It's in the inset. It's right here.

22 Q And to your knowledge, what -- what is significant about
23 Waziristan?

24 A From my knowledge, that Waziristan was a Taliban and
25 Al Qaeda stronghold.

Hadzovic - direct - Ariail

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1 Q Why was that significant to you and Mr. Kaziu?

2 A Because we knew that from there we can go join up with
3 members of Al Qaeda and Taliban and receive training and go
4 fight in jihad.

5 Q Where was it that you expected -- where is the city that
6 you expected to cross the border at?

7 A Right here.

8 Q What's that city called?

9 A Beshawer.

10 Q What's the border like generally between Afghanistan and
11 Pakistan, if you know?

12 MR. STERN: Objection.

13 THE COURT: Overruled.

14 A What's it like?

15 How does it look like?

16 Q Yes.

17 What's it like?

18 A I believe it has like mountains from videos that I have
19 seen.

20 Q Is it easy to cross?

21 A From what I heard, yes.

22 Q How would it be easy to cross?

23 A Because Al Qaeda and Taliban members from Pakistan were
24 crossing this border all the time.

25 Q When you got there -- well, let me back up a second.

Hadzovic - direct - Ariail

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1 Did Mr. Kaziu tell you what he wanted to do when he
2 got to Afghanistan and Pakistan?

3 A Yes.

4 Q What did Mr. Kaziu tell you he wanted to do?

5 A He wanted to go to Pakistan, then join up with members of
6 Taliban and Al Qaeda. From there, receive training and go to
7 Afghanistan, where in Afghanistan fight jihad against US
8 troops and its allies.

9 Q Did Mr. -- sorry.

10 What sorts of weapons did you expect to use when you
11 got to Pakistan and Afghanistan?

12 A Weapons like assault rifles, like AK 47s, M-4s, M-16s,
13 machine guns, RPGs, grenades.

14 Q In Afghanistan, did you and Mr. Kaziu intend to kill US
15 soldiers?

16 A Yes, we did.

17 Q Did you expect that in Afghanistan that you might be
18 killed yourself?

19 A Yes.

20 Q Did Mr. Kaziu expect that he might be killed by US
21 soldiers there too?

22 A Yes.

23 Q Did you ever get to Pakistan or Afghanistan?

24 A No.

25 Q Why not?

Hadzovic - direct - Ariail

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1 A Me personally?

2 Q Yes.

3 A Well, during my stay in Cairo, I had a change of heart
4 and I wanted to come back to the US because the manner in
5 which I left my family by saying foul things to them and
6 cursing them and neglecting them, I realized that's -- that
7 what I did was actually wrong, haram in Islam, illegal.

8 Q Mr. Hadzovic, I want to talk a little bit about the ways
9 that you and Mr. Kaziu communicated with other people while
10 you were in Egypt.

11 How is it that you kept in touch with people back
12 home?

13 A Through MSN and also used that program Just VOIP to call.

14 Q When you say MSN, what are you referring to?

15 A MSN, it's like instant messaging. You can also like
16 video conference.

17 Q Did you have video conferences with people back in the
18 United States on Mr. Kaziu's computer?

19 A Yes, I did.

20 Q Did Mr. Kaziu have video conferences on his computer with
21 people back in the United States?

22 A Yes, he did.

23 Q And the instant messaging, is that also called chatting?

24 A Yes.

25 Q Did you chat with people back in the United States at

Hadzovic - direct - Ariail

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1 times on Mr. Kaziu's computer?

2 A Yes.

3 Q Did Mr. Kaziu chat with people back in the United States?

4 A Yes.

5 Q Did you have other means of communication?

6 A Just through -- sometimes called my family on my phone.

7 Q Did you have an email account?

8 A Yes, I did.

9 Q What was your email account at that time?

10 A Islamic Tawhid at Aim Dot Com.

11 Q Did you have another email account?

12 A I had one prior to that but I didn't use it for emailing
13 back home.

14 Q What was that email account?

15 A Be Forever Makin (ph) at AOL Dot Com.

16 Q How about Mr. Kaziu, did he have an email account?

17 A Yes, he did.

18 Q What was his email account?

19 A He had one Shut Up and Listen at AOL Dot Com.

20 Q Did he have another?

21 A Yes.

22 Q What was it?

23 A Abdurahman 1988 at Live Dot Com.

24 Q Can you spell that for the reporter?

25 A Yes. A B D U R A H M A N 1988 at Live Dot Com.

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Hadzovic - direct - Ariail

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1 THE COURT: To the extent you haven't already
2 provided a list of these various terms to the court reporter,
3 could you make sure you do that, what you just did, or once
4 the answer is given, repeat it somehow.

5 MR. ARIAIL: I certainly will.

6 THE COURT: So the record of the case is complete.

7 MR. ARIAIL: We have provided a list but I will
8 definitely do that, Your Honor.

9 THE COURT: Great. Thank you.

10 Q Mr. Hadzovic, did you and Mr. Kaziu keep in touch with
11 your friend Adem Husseinovic while you were in Cairo?

12 A Yes.

13 Q Did Mr. Kaziu email him?

14 A I mean, I didn't see him email him.

15 Q Do you know if he chatted with him?

16 A Yes, he did.

17 Q Do you know what Adem Husseinovic's email address is?

18 A Yes, I do.

19 Q What is it?

20 A Albanian Joker At Hot Mail Dot Com.

21 Q And Ahmed, Ahmed the Somali, did he have an email
22 address?

23 A Yes.

24 Q Can you tell the Court what, or the jury what his email
25 address was?

Hadzovic - direct - Ariail

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1 A I believe it was Ahmed Dinii at C0 Dot UK.

2 Q Could you spell that for the court reporter, please?

3 A Yes.

4 Ahmed, A H M E D, Dinii, D I N I I, at Code Dot UK,
5 I believe.

6 Q And Mr. Armend Kalanderi, did he have an email address?

7 A Yes, he did.

8 Q What was that?

9 A Armend Kalanderi at, I believe, Live Dot Com.

10 Q If you can spell that for the court reporter?

11 A Armend, A R M E N D; Kalanderi is K A L A N D E R I.

12 Q What kind -- what computers did you use when you were in
13 Cairo?

14 A Mostly Betim's laptop.

15 Q Did you ever go to chat rooms or Internet cafes?

16 A Yes, at the beginning of our stay because we didn't have
17 Internet connection.

18 Q After a certain point, did you stop going to Internet
19 cafes?

20 A Sometimes I went to like watch movies on the -- at the
21 Internet cafe.

22 Q All right. Where was most of your Internet connection
23 though done in Cairo?

24 A On Betim's laptop.

25 Q Mr. Hadzovic, do you know if Mr. Kaziu has a MySpace

Hadzovic - direct - Ariail

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1 page?

2 A Yes, he does.

3 MR. ARIAIL: Your Honor, if I may offer and publish
4 701-L on consent?

5 THE COURT: Yes. Received.

6 (Marked.)

7 You can publish it.

8 Why don't you get rid of those little green circles.

9 MR. ARIAIL: Sure.

10 THE COURT: Thank you.

11 Q Mr. Hadzovic, what are we looking at here?

12 A I believe this is the avatar Betim had on his MySpace.

13 Q When you say avatar, what's an avatar?

14 A It's like a picture you put to like represent you.

15 Q What is this picture of?

16 A To my understanding, it's a picture of this guy being a
17 mujaheed and him holding a flag saying to the brothers and
18 sisters who live, love and fight in the name of Allah.

19 Q When you say a mujaheed, what do you mean?

20 A A holy fighter, one who fights for the cause, for the
21 cause of Islam.

22 MR. ARIAIL: Your Honor, if I may publish and --
23 offer and publish 701-K on consent.

24 THE COURT: Received.

25 (Marked.)

Hadzovic - direct - Ariail

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1 Q Mr. Hadzovic, can you spell mujaheed?

2 A I believe it's spelled M U J A H E E D.

3 Q Is there another way to spell it?

4 A Yes. You can also spell it M U J A H I D.

5 Q And showing on screen Government's Exhibit 701-K, do you
6 recognize this?

7 A Yes, I do.

8 Q What do you recognize this to be?

9 A A picture Betim had on his computer.

10 Q What is the writing up there on the top, what is that?

11 A That's -- that's the writing is that (Arabic spoken),
12 which means I bear witness that there is no God but Allah and
13 that Mohammad is his final messenger.

14 MR. ARIAIL: Would you like me to have him spell
15 that?

16 THE COURT: No. The record will reflect that he
17 said it first -- was that Arabic?

18 THE WITNESS: Yes.

19 THE COURT: It was said first in Arabic and then the
20 English.

21 You provided the English translation?

22 THE WITNESS: Yes.

23 THE COURT: Go ahead.

24 Q What's the depicted on this exhibit, the sign?

25 A From what I can see, it looks like an AK 47, with the

Hadzovic - direct - Ariail

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1 words support our troops.

2 Q To your understanding, who are the troops that are
3 referred to in this document?

4 A The mujahideen.

5 Q Mr. Hadzovic, did you have a cellphone while you were in
6 Cairo?

7 A Yes, I did.

8 Q Can you describe the cellphone for the jury?

9 A It was like a old Nokia phone. It had like I believe
10 grayish sides and like a blue cover, navy, something like
11 that.

12 MR. ARIAIL: Permission to publish 714. It's
13 actually already in evidence, Your Honor.

14 THE COURT: Okay. You can publish it.

15 MR. ARIAIL: I -- it might be better if I approach,
16 Your Honor.

17 THE COURT: All right. You may.

18 Q Showing the witness what's marked as Government's
19 Exhibit 714.

20 Do you recognize this?

21 A It looks a lot like the phone I used in Cairo.

22 Q After you left Cairo, what did you do with the phone?

23 A I believe I left it with Betim.

24 Q Now, Mr. Hadzovic, when you were in Cairo, did you watch
25 videos like the ones we watched earlier yesterday?

Hadzovic - direct - Ariail

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1 A Yes, we did.

2 Q Did you watch other types of videos when you were in
3 Cairo with Mr. Kaziu?

4 A Videos like the ones we watched yesterday, videos on
5 jihad, Osama Bin Laden videos; a lot of those type of videos.

6 Q Were there videos put out by particular groups that you
7 watched in Cairo?

8 A Yes.

9 Q What are some of those groups again?

10 A Primarily one is called as-suhaab.

11 Q What is as-suhaab?

12 A I don't know exactly what it is. But usually they
13 produce videos for like Al Qaeda and Taliban videos.

14 Q How is it that you know that they produce videos for
15 Al Qaeda and Taliban?

16 A Because if you put a as-suhaab in YouTube search box, the
17 majority of the videos, I think all the videos are going to be
18 related to Al Qaeda and Taliban videos.

19 Q Before you left, did you watch as-suhaab videos?

20 A Before we left? I don't think so.

21 Q Okay. Did you watch those primarily when you were in
22 Cairo?

23 A Yes.

24 MR. ARIAIL: Your Honor, if I may use the computer
25 to publish an exhibit to the witness?

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Hadzovic - direct - Ariail

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1 THE COURT: Yes.

2 Q Mr. Hadzovic, I am showing you what's on screen marked
3 as -- a clip in Government Exhibit 802.

4 Do you recognize this?

5 A Yes, I do.

6 Q Who do you recognize this to be?

7 A This is one of the videos me and Betim watched in Cairo
8 of Osama Bin Laden.

9 MR. ARIAIL: Your Honor, I ask to offer and publish
10 802.

11 MR. STERN: I have the same objection as I did
12 yesterday.

13 THE COURT: Okay.

14 Overruled.

15 Proceed.

16 (Marked.)

17 Q Mr. Hadzovic, before we play this video, in the bottom
18 right-hand corner, do you see a gold symbol there?

19 A Yes, do I.

20 Q What is that gold symbol, to your knowledge?

21 A From my knowledge, it looks like the as-suhaab symbol.

22 Q The as -- suhaab, is that the media group you were
23 talking about just a minute ago?

24 A Yes, it is.

25 Q If you can spell that for the reporter too?

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1 A Yes; A S slash S A H A B.

2 Q In the upper left, Aljazeera, what's that?

3 A It is an Arabic news channel.

4 Q Who is the individual depicted in this video?

5 A Osama Bin Laden.

6 Q What is the item to the left of Osama Bin Laden?

7 A It looks like an AK 47.

8 Q Why does it look like an AK 47?

9 MR. ARIAIL: Objection.

10 THE COURT: Sustained as to form.

11 Q How do you know that it is an AK 47, Mr. Hadzovic?

12 A I've never seen an AK 47 in real life but like from
13 playing video games and seeing it on TV, the description, the
14 way it looks looks exactly like an AK 47.

15 Q What about it that looks like an AK 47?

16 A Primarily, the clip. It's like a banana type clip.

17 (Video plays; video stops.)

18 Q Now, Mr. Hadzovic, what is it that Osama Bin Laden is
19 discussing in that video?

20 A The attacks on September 11th.

21 Q And the attacks where?

22 A In New York.

23 Q Did you and Mr. Kaziu have conversations about the
24 attacks that occurred on September 11th in New York?

25 MR. STERN: Objection.

Hadzovic - direct - Ariail

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1 THE COURT: Overruled.

2 A We spoke about whether it was permissible or not to kill
3 yourself.

4 Q What do you mean by that?

5 A Like on September 11th, how the -- those people who drove
6 the plane into the World Trade Centers, they killed
7 themselves. They did suicide. So we had a discussion as to
8 whether it was permissible or not.

9 Q What was that discussion?

10 A Basically, I was of the opinion prior that it is
11 permissible to kill yourself if you meet certain
12 circumstances, such as retaliation, where someone attacked you
13 and now you can go attack them.

14 Later on, after reading from senior scholars, like
15 Salih Al Fawzan and the grand mufti of Saudi Arabia, I
16 realized that this action was haram, that it was illegal and
17 those who killed themselves, hell fire is their eternal abode.

18 Q Can you spell the name of the scholar you mentioned a
19 minute ago?

20 A Yes. Salih, S A L I H, A L, F A W Z A N.

21 Q Did Mr. Kaziu tell you his opinion of the attacks on
22 New York on September 11th?

23 A Yes, he did.

24 Q What specifically did he say to you about the attacks on
25 September 11th?

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Hadzovic - direct - Ariail

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1 MR. STERN: Objection.

2 THE COURT: Overruled.

3 A He spoke that because of what America was doing to the
4 Muslims, that under these circumstances, that what happened on
5 September 11th by those people killing themselves was
6 permissible.

7 Q Did he tell you who he thought had perpetrated the
8 attacks on 9/11?

9 A We both thought that it was members of Al Qaeda.

10 Q Now, you talked earlier about a person whose name was
11 Fadil.

12 Who again was Fadil?

13 A He's a Bosnian guy that was studying in Egypt that we met
14 over there.

15 Q How did you meet fallow?

16 A Through Armend.

17 Q And when was it that you met fallow?

18 A I would say, in March of '08.

19 Q Did you talk with Fadil about jihad?

20 A Yes, we did.

21 Q When you say we, did Mr. Kaziu talk with Fadil about
22 jihad, to your knowledge?

23 A Yes.

24 Q Do you know what Fadil's opinion on jihad was?

25 A He wasn't against it. He was for it.

Hadzovic - direct - Ariail

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1 Q What is it that Fadil did back in Germany?

2 A I mean, he was unemployed so he was getting unemployment
3 but he told us that he used to give like lectures at the
4 mosque.

5 Q Did Fadil speak English?

6 A No, sir, he didn't.

7 Q What languages did he speak?

8 A He spoke Serbo-Croatian and Albanian.

9 Q How is it that you and Mr. Kaziu would communicate with
10 him?

11 A I would talk to him in Serbo-Croatian and Betim would
12 talk to him in Albanian.

13 Q Did you or Mr. Kaziu have a discussion with Fadil about
14 Islamic lectures?

15 A He asked if we could write him a lecture -- if Betim
16 could write him a lecture.

17 Q Can you tell the jury a little bit about the discussion
18 that you had with Fadil?

19 A Yes.

20 Well, we knew that Fadil used to give lectures back
21 in Germany to the local mosque that he used to attend and he
22 asked -- since we knew that he was giving lectures there, he
23 asked if Betim could write him a lecture so he could bring it
24 back home and give it to the audience.

25 Q Did Mr. Kaziu do that?

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1 A Yes.

2 Q How do you know?

3 A Because I was there when he was writing it.

4 Q Did you keep copies of that lecture?

5 A Yes.

6 Q Where did you keep copies?

7 A I believe I had one in my email address.

8 Q Did Mr. Kaziu ask you to do anything with those lectures?

9 A I translated it into German and in Bosnian --
10 Serbo-Croat.

11 Q How did you do that?

12 A I Googled, went on Googled and put Translator and then
13 from one of those links I just used the program.

14 Q Can you tell the jury generally what the sermon was that
15 Mr. Kaziu wrote?

16 A I've only read it in Serbo-Croat and I don't -- I don't
17 speak -- I mean, I don't read it too well. I can speak it
18 pretty good.

19 But from my understanding of reading it in
20 Serbo-Croat, it speaks about the situation today, what's
21 happening in the world in places like Afghanistan and Chechnya
22 and in Palestine and that the men of today are not acting like
23 men and that we should rise against the oppressors, fight
24 against these oppressors.

25 Q Does it say how it is you should fight against your

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Hadzovic - direct - Ariail

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1 oppressors?

2 A Physically fight, like in jihad, war-like.

3 Q In addition to meeting with Ahmed and Armend for the
4 purposes of going to go fight, what other steps did you
5 take -- did you and Mr. Kaziu take to acquire firearms when
6 you were in Egypt?

7 A We used to ask people if they knew where a black market
8 is.

9 Q What do you mean a black market?

10 A A black market is where they sell firearms and other
11 things for very cheap.

12 Q Why was it that you were asking people about black
13 markets for firearms in Egypt?

14 A For our own like protection to have in our house.

15 Q Why?

16 A Well, just in case anything ever happened in Egypt.

17 Q What types of firearms were you looking for in Egypt?

18 A Any -- any type of firearms but we spoke about
19 like -- assault rifles primarily, like AK 47s.

20 Q When you said in case something happened in Egypt, what
21 do you mean?

22 A Like some type of war, some type of revolution.

23 Q Did you and Mr. Kaziu talk about whether or not a
24 revolution might break out in Egypt?

25 A Yes, we did.

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Hadzovic - direct - Ariail

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1 Q Can you tell the jury about those discussions?

2 A Yes.

3 Our first I believe week there we used to go on the
4 balcony of our apartment and we used to speak about imagine
5 war had ever came here and basically what it would look like,
6 like you would have snipers on the roofs and like people
7 running around and shooting.

8 Q Did you talk about how you would be involved in that war,
9 if it came?

10 A I mean, we spoke about if we were here and that had
11 happened, that we would fight.

12 Q Who specifically did you approach about purchasing
13 firearms while you were in Egypt?

14 A We approached I believe like two or three people.

15 Q Who?

16 A One of them was Sayf Udin.

17 Q Who is Sayf Udin?

18 A He's an American that was studying in Cairo.

19 Q Why did you ask him?

20 A He was living there longer and he spoke English. So we
21 figured why not.

22 Q Do you remember who else you asked?

23 A I believe I asked Mourad.

24 Q Who is Mourad?

25 A He's a Moroccan German.

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Hadzovic - direct - Ariail

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1 Q While you were in Egypt, did President Obama come to
2 speak in Cairo?

3 A Yes, he did.

4 Q When was that, if you can recall?

5 A I believe in April of '08.

6 Q Prior to President Obama's visit in Cairo during that
7 time, did any -- I'm sorry.

8 What was the date you said?

9 A Somewhere in April, I believe, of '08.

10 Q Of '08 or '09?

11 A Oh, '09. I'm sorry.

12 Q Prior to President Obama's visit, did anything
13 significant happen that you can recall in Cairo?

14 A Yes.

15 Q What happened?

16 A Basically, police were riding the areas and looking for
17 people that were like illegally there.

18 Q How do you know this?

19 A Because I lived in that area and people told me that they
20 were arresting brothers.

21 Q Did you see police on the streets?

22 A Yes.

23 Q Where did you see police?

24 A We were going for the morning prayer at Masjid
25 Quddes. There was a huge police truck in front of the Masjid.

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Hadzovic - direct - Ariail

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1 Q As a result of the police activity, did you and Mr. Kaziu
2 take any precautions?

3 A Yes.

4 Q What did you do?

5 A We stayed inside the house.

6 Q Ultimately, did you watch President Obama's speech in
7 Cairo?

8 A Yes, I did.

9 Q When did you watch it?

10 A I believe the same day or the day after.

11 Q Where did you watch it?

12 A On Betim's computer.

13 Q Were you watching it alone or with someone else?

14 A I believe it was just me and Mourad.

15 Q After you watched the speech, did you have discussions
16 with anyone about what was in the speech?

17 A Yes.

18 Q Who did you talk with about the speech?

19 A I spoke with Mourad about the speech and I also spoke to
20 Betim about the speech.

21 Q Can you tell the jury about the conversations you had
22 with Mourad and Mr. Kaziu about the speech?

23 MR. STERN: Objection.

24 THE COURT: Come on up, please.

25 (Side bar.)

Hadzovic - direct - Ariail

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1 THE COURT: What is your objection?

2 MR. STERN: I think there is a point at which this
3 begins to infringe on the First Amendment. He had a
4 conversation about Obama's speech like millions of people did.
5 He said whatever it was he said. It doesn't have anything to
6 do with the conspiracy, with buying guns, any of those things.

7 It gets to be so prejudicial at some point. We are
8 talking about what he said about the president to a jury of
9 Americans. This jury will never judge this case on the things
10 they are supposed to judge it on.

11 THE COURT: What's the essence of the discussion?

12 MR. ARIAIL: The essence of the discussion is that
13 at this point in time basically Mr. Hadzovic starts to have a
14 change of heart while he is in Cairo. He watches part of this
15 speech and he talks about it with Betim Kaziu and he,
16 Mr. Hadzovic says that he likes the speech. He thinks it's a
17 good speech. Mr. Kaziu says to him, no, he's a liar. These
18 people, these kuffars are liars and they are trying to throw
19 sand in your eyes to distract you from what it is that you
20 need to do.

21 MR. STERN: Americans say that. Tea Party people
22 say that. Lots of people say that.

23 MR. ARIAIL: But in the context, he's in Cairo
24 trying to go fight jihad. It's directly relevant. It
25 definitely reflects his intent.

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Hadzovic - direct - Ariail

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1 I am almost done here, Your Honor. This is a
2 significant piece of his testimony. I think it's not highly
3 prejudicial. It's along the lines of the same intent evidence
4 that we have been putting in throughout his direct
5 examination. If he wants to cross-examine him on it he can.

6 MR. STERN: To the extent it's not -- I thought the
7 other stuff was unfairly prejudicial.

8 THE COURT: I understand.

9 The objection is overruled.

10 Would you like me to reiterate -- it's not so much a
11 limiting instruction as it is to what I will refer to as a
12 keep-your-eye-on-the-ball instruction to the jury.

13 MR. STERN: I would like to you, yes.

14 THE COURT: I will do that.

15 (Continued on next page.)
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Hadzovic - direct - Ariail

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1 THE COURT: Go ahead.

2 EXAMINATION CONTINUES

3 BY MR. ARIAIL:

4 Q Could you tell the jury, Mr. Hadzovic, what -- about the
5 conversations that you and Mourad and Mr. Kaziu had about
6 President Obama's speech?

7 A Yes.

8 I spoke with Mourad about it and President Osama
9 came to address the Islamic world and after listening to this
10 lecture I -- I was hopeful for the relationship between the
11 Islamic world and the US and Mourad felt the same way.

12 When we brought it up to Betim, Betim said don't let
13 it fool you. It's like throwing sand in your eyes, just to
14 blind you from the truth.

15 Q Now, did you respond to Mr. Kaziu's comment?

16 A He -- I told him that's his opinion, like that's what he
17 thinks and that's what we think.

18 Q Now, Mr. Hadzovic, did there come a time in Cairo when
19 you started to this think that your plan to fight jihad with
20 Mr. Kaziu was a bad idea?

21 A Yes.

22 Q Did there come a time that your -- you began to think
23 that your plan to hijra or migrate was a bad idea?

24 A Yes.

25 Q When was that?

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Hadzovic - direct - Ariail

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1 A In about May of '09.

2 Q Were there specific events that started to change your
3 mind on these ideas?

4 A Yes.

5 Q What were they, if you can tell the jury?

6 A Yes.

7 THE COURT: Before you do and before we put too much
8 distance between ourselves and this testimony you heard about
9 the reaction to the president's speech, let me remind you,
10 again, what I mentioned to you yesterday, which is the case is
11 a criminal case. It is not about political views or political
12 disagreements or political extremism, religious extremism. It
13 is about particular charges, chief among them conspiracy to
14 lend material support to a terrorist organization, conspiracy
15 to murder American troops.

16 There are particular crimes that have
17 discrete -- and I will lay them out for you in detail when I
18 give you instructions at the end of the case -- discrete
19 ingredients, elements, that have to be proved beyond a
20 reasonable doubt.

21 It is so important in a case like this -- you now
22 saw a video of Osama Bin Laden earlier today, you hear about
23 an expression by the defendant of antiAmerican sentiment.
24 This case isn't about antiAmericanism. It isn't about whether
25 one reviles or idolizes figures like Osama Bin Laden.

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Hadzovic - direct - Ariail

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1 That evidence has been placed before you because
2 there will be, one element of the offense will be, particular
3 intent to, for example, join a conspiracy and to further a
4 conspiracy's goals. Only to the extent that that evidence is
5 relevant to those elements of the offense is it placed before
6 you. You can't allow a demonstration that the, or proof, no
7 matter how powerful it might be, that a defendant harbored a
8 political view or religious view that you find abhorrent, you
9 can't let that be a substitute for proof beyond a reasonable
10 doubt of the crimes charged.

11 Okay?

12 I warned you, I would do this from time to time and
13 kind of reiterate what ultimately will be the subject of your
14 deliberations. It is not going to be these other things. It
15 is going to be whether the government has proven the crimes
16 charged beyond a reasonable doubt.

17 Okay?

18 Sorry for the interruption, Mr. Ariail.

19 MR. ARIAIL: Thank you, Your Honor.

20 THE COURT: Does anybody want to be heard further on
21 the instruction?

22 MR. STERN: No.

23 THE COURT: The government? Does the government
24 want to be heard further on the instruction?

25 MR. ARIAIL: No, Your Honor. Thank you very much.

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Hadzovic - direct - Ariail

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1 EXAMINATION CONTINUES

2 BY MR. ARIAIL:

3 Q Now, if you could, Mr. Hadzovic, tell the jury again what
4 were the events, the specific events that started to change
5 your mind on your plans to go fight jihad and to do hijra with
6 Mr. Kaziu?

7 A I used to speak with Mourad about issues pertaining to
8 jihad and I told him about the way in which I left America and
9 how I was towards my family, that I didn't want to go to
10 school because I felt school was haram because you are free
11 fixing with other people.

12 Mourad basically in -- told me that the situation
13 today is very confusing, what is happening, what they are
14 doing is wrong and what others are doing is wrong. It's
15 really not something to get involved with.

16 He also told me like no, this is for school, that
17 going to school and getting the education, getting a degree is
18 something that we should all do because we are not stupid. We
19 are smarter and we are intelligent people.

20 Also, I spoke about the issues with my parents and
21 how I left them. And he said you know, this is something that
22 you did really wrong and god won't forgive you unless you go
23 back and make things right with them.

24 Also, I used to speak with my parents and knowing
25 that how I left them and how I neglected them, even after that

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Hadzovic - direct - Ariail

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1 they were still there and supporting me and giving me money so
2 I can study over there. And they used -- my father when I
3 left, my brother told me like he was really sad.

4 MR. STERN: Objection.

5 THE COURT: Sustained.

6 Q Mr. Hadzovic, did your -- how is it that your opinion of
7 jihad changed in May of 2009?

8 A Primarily through scholars, like Salih Al Fawzan and the
9 grand mufti of Saudi Arabia, who said that the jihad of today,
10 of what's happening in Afghanistan and Pakistan and these
11 places is wrong and what these members of Al Qaeda and Taliban
12 and all those who are associated with them are wrong,
13 wrongdoers and for them it's the hell fire.

14 Q Were there certain -- you mentioned -- if you could spell
15 actually before we move on -- the name of the scholar you
16 referred to for the court reporter?

17 A Sure. Salih, S A L I H, A L, F A W Z A N.

18 Q When you started listening to these other scholars, like
19 Sheikh Fawzan, did you stop listening to other people?

20 A Yes.

21 Q Who did you stop listening to?

22 A People like Anwar Al-Awlaki and Osama Bin Laden and
23 videos like with Al Shabaab.

24 Q And those other individuals that you named, Anwar
25 Al-Awlaki and Osama Bin Laden, what were their opinions, if

Hadzovic - direct - Ariail

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1 you know, of jihad?

2 A That there was obligatory upon every single Muslim.

3 Q Are you familiar with the term ishtikara in Islam?

4 A Ishtikara.

5 Q Can you spell that?

6 A I believe it's spelled I S T I K H A R A.

7 Q What is that?

8 A It's a process in which one Muslim undergoes when he
9 makes the decision in life, a big decision.

10 Q What steps do you take in going through ishtikara?

11 A I believe it's you pray rakat, and after that you make
12 the invocation to God. Saying oh God, and then saying the
13 decision in which you are going to undertake. If this is good
14 for me, then guide me in it and make it easy for me and bless
15 me in it. And if it's wrong for me, bring me away from it and
16 don't let me go on to that path.

17 Q Did you go through a process of ishtikara here?

18 A Yes, I did.

19 Q What steps did you take in that process?

20 A Well, after I made my decision that I was going home, I
21 prayed to Ikari (ph) and I invoked to Allah, asking him that
22 I want to go back to America and that if this is right for me,
23 then make it easy for me and bless me and if it's wrong for
24 me, then keep me away from it and that.

25 Q Did you ask other Muslims about your decision?

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1 A Yes.

2 Q Who did you consult with?

3 A I spoke with Mourad and Mourad gave me good advice,
4 advice that I should go back home and that I should study.

5 MR. STERN: Objection.

6 THE COURT: Excuse me?

7 MR. STERN: Objection as to what he was told by
8 Mourad.

9 THE COURT: Sustained:

10 Strike it.

11 Go ahead.

12 (Continued on next page.)

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1 CONTINUED DIRECT EXAMINATION

2 BY MR. ARIAIL:

3 Q Did you consult with Mourad?

4 A Yes, I did.

5 Q Did you consult with other Islamic scholars about your
6 decisions?

7 A Yes.

8 Q Were there particular web sites or resources that you
9 looked at in that process?

10 A Yes.

11 Q What web site or resources did you look at?

12 A I looked at this one web site, Islamicqanda.

13 Q What's that?

14 A A web site for questions, any question you ask, they can
15 try to give you evidence.

16 Q Did you go to this web site Islamicqanda?

17 A Yes.

18 Q What did you do with the proof?

19 A I saved it in my folder.

20 Q What do you mean you saved it in your folder?

21 A I saved in case Betim ever asked why I was going back to
22 the States and this was proof.

23 Q Did you do anything else?

24 A Yes.

25 Q What did you do?

Hadzovic-direct-Ariail

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1 A I translated it into German for Mourad.

2 Q How did you do that?

3 A I went on Google, put in translator and from the links I
4 used, I translated it.

5 Q Did you talk to your parents and your family at this
6 time?

7 A Yes, I did.

8 Q Can you tell the jury a little bit about those
9 conversations?

10 MR. STERN: Objection.

11 THE COURT: Sustained.

12 Q After you spoke with your family, did you make a
13 decisions?

14 A Yes.

15 Q What was your decision?

16 A First I was going to go to Montenegro to visit my family,
17 from there I was going back to the U.S.

18 Q How did you get a ticket?

19 A My father paid for it.

20 Q Did your father buy it for you specifically?

21 A My sister booked, my father paid.

22 Q When you made up your mind to be in Cairo, did you give
23 up your plans to go fight Jihad with Betim Kaziu? Did you
24 talk about the fact you were leaving to go to Plav with
25 Mr. Kaziu?

Hadzovic-direct-Ariail

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1 A Yes.

2 Q What did you tell him?

3 A I told him I was going to go to Plav to get married and
4 that I would return.

5 Q Why did you tell him that?

6 A Because I knew if he found out I was going back to the
7 States, he would get angry. I wanted to save an argument.

8 Q How did he react when you told him you were going to Plav
9 to get married, come back to Cairo?

10 A He reacted in a good way, wasn't against it.

11 Q Did you talk about the fact that you were leaving to go
12 back to the United States with Mourad?

13 A Yes, I did.

14 Q What is it you told Mourad?

15 MR. STERN: Objection.

16 THE COURT: Sustained.

17 MR. ARIAIL: What he said, your Honor.

18 THE COURT: Sustained.

19 Q Before you left Cairo, did Mr. Kaziu found out what you
20 were really doing?

21 A Yes.

22 Q Did he confront you about that?

23 A Yes, he did.

24 Q Can you tell the jury what happened when Mr. Kaziu
25 confronted you about the fact you were leaving Cairo, going

Hadzovic-direct-Ariail

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1 back to the United States?

2 A Yes. About, I believe, a day before I was leaving to
3 Plav, from Plav to the United States, Betim found out. I'm
4 not sure how. He came and asked me as to whether I was going.
5 I told him yes. He was angry with me, said why are you going
6 back to the disbelieving lands? What about our plans to
7 fight, this meaning for Jihad. He also knew I was going to
8 Plav first. He said how about we go over there, do it,
9 meaning -- I responded, I'm leaving back home. I made a
10 mistake with my parents. I need to make things right with
11 them.

12 Q When Mr. Kaziu said how about we go over there and do it,
13 did you have an understanding what he meant?

14 A To my understanding I believe he meant the Balkans.

15 Q To do what in the Balkans?

16 A Fight Jihad.

17 Q Did you have an understanding of who it was that would
18 fight Jihad with in the Balkans?

19 A Primarily against NATO.

20 Q How do you know that?

21 A Because NATO was stationed there after the war in Bosnia.

22 Q What is NATO?

23 A NATO is like an allied force of the world.

24 Q Are U.S. troops involved in NATO?

25 A Yes, they are.

Hadzovic-direct-Ariail

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1 Q Are U.S. troops stationed in the Balkans?

2 A Yes, they are.

3 Q How do you know that?

4 A Well, NATO is a group of troops from every -- almost
5 every single country. Other than that, when I actually went
6 to Kosovo, I see them.

7 Q You had seen who?

8 A U.S. troops.

9 Q Where?

10 A In Kosovo.

11 Q After leaving Cairo, where exactly -- withdrawn. --
12 How did you leave Cairo?

13 A From Cairo I went to the Cairo airport, me, Betim and
14 Mourad. We said our good-byes. I got on the plane; from
15 Cairo, Istanbul, from Istanbul to Prizren in Kosovo.

16 Q After you got to Kosovo, what did you do?

17 A My uncle and his son picked me up from the airport and we
18 drove to Plav, Montenegro.

19 Q Who is there in Montenegro when you got there?

20 A I have my uncles there, my aunts, my grandmother, my
21 cousins.

22 Q At a certain point, did any of your other family members
23 from the United States come to Kosovo or Montenegro?

24 A Yes.

25 Q Who?

Hadzovic-direct-Ariail

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1 A My uncle's son Ernest and my brother Eldon.

2 Q After you left Egypt, did you communicate in any way with
3 Betim Kaziu?

4 A Yes, I did.

5 Q How did you communicate with him?

6 A Through e-mail.

7 Q Can you tell the jury about those e-mail conversations?

8 A Yes, after I left, Betim sent me e-mails asking why I was
9 going back, that I shouldn't go back. He asked about what
10 about those things that we talked about that we didn't do?
11 From my understanding that meant the Jihad. He was advising
12 me not to go back.

13 Q Sorry, what was he advising you?

14 A Not to go back to the States.

15 Q Why?

16 A Because, that we made Hijrah from the states to Cairo.
17 And also that while in Cairo, we spoke about things that we
18 were going to do, we tried to do them and, of course, I never
19 got around to doing it because I left. The people we asked
20 couldn't help. We didn't do it and I left.

21 Q Other than e-mail, have you spoken with Mr. Kaziu's since
22 you left Egypt?

23 A Yes.

24 Q When did you speak with him?

25 A In August of '09.

Hadzovic-direct-Ariail

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1 Q How did you speak with him?

2 A Video conference.

3 Q During that conversation on video conference, where were
4 you?

5 A I was at home in the states.

6 Q Did Mr. Kaziu tell you where he was?

7 A Yes.

8 Q Where did he say that he was?

9 A He was in Kosovo.

10 Q Who did he say, if at all, he was with?

11 A He said he went there with Blerim.

12 Q Who is that?

13 A The guy that Arman (ph) spoke about, hooking us up to go
14 to Pakistan.

15 Q For what purpose?

16 A For fighting Jihad.

17 Q After you returned to the United States, were you
18 ultimately approached by federal agents?

19 A Yes.

20 Q When did that happen?

21 A About three weeks after I returned.

22 Q During that process, did you give the agents consent to
23 search your e-mail account?

24 A Yes.

25 Q Did the agents search your e-mail account?

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1 A Yes.

2 Q Did they print out e-mails, show them to you?

3 A Yes.

4 MR. ARIAIL: If I can, on consent, I would like to
5 offer and publish Government Exhibit 322.

6 THE COURT: Received.

7 (So marked.)

8 Q On the screen is 322, government exhibit. Can you tell
9 the jury what this is?

10 A This is when my sister booked the tickets from Italy to
11 Cairo to Istanbul to Pristina.

12 Q In the lower left-hand, what is that writing?

13 A That's my signature.

14 Q When did you put your signature on that document?

15 A When?

16 Q Yes, approximately when did you put that on that
17 document?

18 A It was in August of '09.

19 Q Over here on the right side, these other initials, what
20 are these?

21 A The initials of the agents.

22 Q You say the agents, what do you mean?

23 A The people that questioned me.

24 Q At the top here, of the document, this is your e-mail
25 address?

Hadzovic-direct-Ariail

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1 A Yes.

2 Q The one below that, whose e-mail address is that?

3 A My uncle's son that was coming to pick me up.

4 Q I'm directing your attention to the second page of the
5 document, the bottom. What's the date on the flight here?

6 A June 8th.

7 Q Where are you flying from and to?

8 A From Cairo to Istanbul, Turkey, from Istanbul to
9 Pristina.

10 Q On the last page, page three of four of the document,
11 there's another itinerary. You see that?

12 A Yes.

13 Q What's that itinerary?

14 A The return back to Cairo.

15 Q Did you take that flight?

16 A No, I didn't.

17 Q Why is it that you bought a ticket to return to Cairo if
18 you didn't take the flight?

19 A For the purpose to make him believe I was coming back.

20 Q Why was that important?

21 A Because I didn't want him to know I was going back to the
22 States.

23 Q Why not?

24 A Because if he knows I'm going back to the states, that we
25 would argue.

Hadzovic-direct-Ariail

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1 Q Why would you argue?

2 A Because before we left, we basically made a decision we
3 would leave and never come back and that we were going to
4 fight Jihad.

5 MR. ARIAIL: Your Honor, I request permission to
6 offer and publish 320 A, B and C.

7 THE COURT: Is that on consent?

8 MR. ARIAIL: Yes.

9 THE COURT: Received.

10 (So marked.)

11 Q Mr. Hadzovic, do you recognize this document?

12 A Yes.

13 Q What is this document?

14 A This is the document, the lecture Betim wrote.

15 Q What language is this?

16 A I believe this is in Albanian.

17 Q You speak Albanian?

18 A No, I don't.

19 Q How do you know this is Albanian?

20 A Because some of the words seem Albanian but, again, I
21 don't read or speak Albanian.

22 Q Again, at the top, are those your initials?

23 A Yes.

24 Q These over here?

25 A The agents.

Hadzovic-direct-Ariail

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1 Q When did you initial this document, again?

2 A In August of '09.

3 Q Is this when you gave the agents consent to search your
4 e-mail account?

5 A Yes.

6 MR. ARIAIL: I'll publish 320 B, your Honor.

7 Q Do you recognize this document?

8 A Yes.

9 Q What is this document?

10 A This is the same document as the previous one, just in
11 German.

12 Q How do you know that?

13 A Because I translated it.

14 Q How did you translate it, again?

15 A From Google, put in translator, used the links there.

16 Q Why did you translate it into German?

17 A For Fadil.

18 Q Who, again, is Fadil?

19 A The Bosnian guy we met in Egypt. He was from Germany.

20 He used to give lectures at the mosque.

21 Q I'll show you on screen Government Exhibit 320 C. Do you
22 recognize this?

23 A Yes, I do.

24 Q What is this?

25 A This is the same lecture, Serbo-Croat.

Hadzovic-direct-Ariail

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1 Q Do you understand Serbo-Croat?

2 A I understand it but I'm not the best reader.

3 Q How is it you translated this document into Serbo-Croat?

4 A The same way I translated the previous documents from
5 Google. I typed in translator and then I used the links.

6 Q Mr. Hadzovic, tell the jury again in sum and substance
7 what this document says, if you know?

8 A To the best of my understanding, what I can actually
9 understand from it, it speaks about the situation the Muslims
10 are learning today, also talks about how back in the day when
11 there was one Jew who oppressed a Muslim woman, that war was
12 waged for her and that Jihad today is obligatory upon every
13 Muslim in a place like Palestine, Iraq, Afghanistan, Chechnya,
14 Somalia, we should basically support Mujahideen.

15 Q Mr. Hadzovic, does it specifically mention those
16 countries you're referring to?

17 A Yes, it does.

18 Q Directing your attention to the second page of the
19 document, if you could mark on the screen, point out in this
20 Serbo-Croat document where Mr. Kaziu's specifically refers to
21 the places that it is obligatory to fight Jihad.

22 A Sure, like right there, there's Afghanistan. Next to it
23 is Iraq, Somalia, Sudan, Sheeshan, which is Chechnya.

24 THE COURT: Slow down.

25 A Sheeshan which is Chechnya, and next to that is

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1 Palestine.

2 MR. ARIAIL: For the record, the witness is
3 referring to the fourth and fifth lines.

4 THE COURT: Thank you.

5 MR. ARIAIL: At this time I would like to publish,
6 offer and publish on consent Government Exhibit 323.

7 THE COURT: Received.

8 (So marked.)

9 Q Mr. Hadzovic, you recognize this document?

10 A Yes, I do.

11 Q What do you recognize this to be?

12 A The question I asked on Islamicqanda about the conditions
13 of Hijrah.

14 Q The question you asked Islamicqanda, are you referring to
15 the process you went to Ishtikara in Cairo.

16 Q When you say, Mr. Hadzovic, this is related, can you tell
17 the jury again what is this document?

18 A This document is the question I posted on Islamicqanda
19 about the conditions of Hijrah.

20 Q On the bottom left of the document, are those your
21 initials?

22 A Yes.

23 Q To the right, whose are those initials?

24 A The agents that were there that day.

25 Q Where is this document from?

Hadzovic-direct-Ariail

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1 A This is from an e-mail.

2 Q From whose, yours or someone else's?

3 A Mine's.

4 Q Generally, can you tell the jury what this document says
5 about Hijrah?

6 A The question was whether when does it become obligatory
7 upon a Muslim to leave a land in which he's living and the
8 conditions that need to be met that he's not able to practice
9 his religion, really, in that country; that he is not able to
10 call other people to this religion in that country where he's
11 being oppressed in that country.

12 Q I'll show you on screen --

13 MR. ARIAIL: Offer 324 on consent; request
14 permission to publish.

15 THE COURT: Received.

16 (So marked.)

17 Q Do you recognize this document?

18 A Yes, I do.

19 Q What is this document?

20 A This is the same question and answer, just in German.

21 Q Why is it in German?

22 A Because I sent it to Mourad.

23 Q Again, at the top, is that your e-mail address?

24 A Yes.

25 Q Mourad, whose e-mail address is that?

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1 A That's Mourad's.

2 Q Why is it you sent this document to Mourad?

3 A Just in case he was ever asked about Hijrah.

4 MR. ARIAIL: Your Honor, at this time I would
5 request permission to offer 316 on consent an publish it to
6 the jury.

7 THE COURT: Received.

8 (So marked.)

9 MR. ARIAIL: I'll publish it.

10 Q Mr. Hadzovic, you recognize this document?

11 A Yes, I do.

12 Q What is this document?

13 A This is the advice Betim gave to me after I left to Plav.

14 Q Is this an e-mail?

15 A Yes.

16 Q Who is it from and to?

17 A It's from Betim Kaziu to me.

18 Q What's the e-mail address he's using in this e-mail?

19 A Abdurahman1988@live.com.

20 Q What's the date?

21 A 22nd of June, 2009.

22 Q When is it that you left Cairo?

23 A I believe June 8th of 2009.

24 Q Where were you when you received this e-mail?

25 A In Plav.

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1 Q If you could, Mr. Hadzovic, could you walk the jury
2 through this e-mail and explain what it is that Mr. Kaziu is
3 saying to you in this e-mail?

4 A Basically he's advising me as to why basically I
5 shouldn't go back to the U.S. and that we said things we
6 didn't finish and he gives verses from the Koran saying
7 basically you can sacrifice everything for this cause, meaning
8 Jihad.

9 Q If you could, the second line, could you read that, the
10 second sentence, read that aloud to the jurors.

11 THE COURT: It's hard to read. Could you zoom?

12 MR. ARIAIL: Sorry, your Honor.

13 A Starting from I wanted, I wanted to send you a letter for
14 the protection of us arguing or yelling, forgive me if it
15 makes you angry or uncomfortable, by I want to advise my
16 brother for what hes doing makes me uncomfortable and if you
17 could clear up the situation of what you want to do, because
18 you told me it was for your parents and you have to clear up
19 the issue that you have while theyre paying and supporting you
20 is a sign of theyre forgiving you.

21 Q What did you understand Mr. Kaziu is saying, that you
22 need to clear up the situation, what you want to do? What
23 does that mean?

24 A The situation meaning me going back to the states.

25 Q As opposed to what?

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1 A As opposed to staying in Cairo.

2 Q Doing what?

3 A Fighting Jihad.

4 Q If you could read the second sentence -- the next
5 sentence?

6 A And if it is for that reason Allah says in the Qur'an
7 009.024 (say; If it be that your fathers, your sons, your
8 brothers, your mates, or your kindred; the wealth that ye have
9 gained; the commerce in which ye fear a decline: Or the
10 dwellings in which ye delight - are dear to you than God, or
11 His Apostle, or the striving in His case;-then wait until God
12 brings about His decision: And God guides not the rebellious.)

13 Q What's your understanding what he says in that line?

14 A Basically if we're going to do this, meaning Jihad, it
15 doesn't matter about your fathers and sons and brothers and
16 your kindred because you're doing the right thing in the long
17 run.

18 Q Earlier in your testimony, you talk about a lecture from
19 an individual named Anwar Al-Awlaki?

20 A Yes.

21 Q Is there a lecture that makes a similar point to the one
22 that Mr. Kaziu's is making in this e-mail?

23 A Yes.

24 Q Which lecture is that?

25 A The advice for those who stay behind.

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1 Q What does that lecture say?

2 A The lecture talks about advising those who stay behind as
3 to why one would stay behind from the causes of Jihad.

4 Q What are the reasons why people who are Muslims would
5 stay behind and not go and fight Jihad?

6 A Many reasons. There's family, friends, a wife, kids,
7 life in general, living a normal life, wealth, things of that
8 sort.

9 Q What does Anwar Al-Awlaki advise to Muslims about those
10 conversations?

11 A That you should sacrifice these for the greater good.

12 Q Why?

13 A Because the outcome of you going and fighting in Jihad is
14 better for you than this.

15 Q What is the outcome of fighting and dying for Jihad?

16 A The outcome, if one who is fighting was sincere, then he
17 would come to paradise.

18 Q What if you're a Muslim and you don't die a martyr in
19 Jihad, what happens to you?

20 A Then you go through the trials and tribulations of the
21 grave. You go through the day of judgment.

22 Q What are the trials and tribulations?

23 MR. STERN: Asked and answered.

24 THE COURT: Sustained.

25 Q Could you read the next line that begins so the sacrifice

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1 would be made?

2 A So the sacrifices we made are for his sake and part of
3 sacrifice is to leave behind those you love. But if its for
4 fear that you felt from the situation here Allah also says in
5 the Qur'an Al-Baqarah: 155-157 (And we surely test you with
6 some fear, hunger and shortages of property, people and
7 produce. But give good tidings to the steadfast. Those who,
8 when a calamity befalls them say: "We belong to Allah and to
9 Him we return." Upon these are prayers from their Lord and
10 mercy and these are the rightly-guided ones.)

11 Q What did you understand Mr. Kaziu's to be telling you in
12 that line?

13 A Basically if you're feeling these ways, if you're scared,
14 just be steadfast to Islam and Allah will make it easier for
15 you. If you're going through hardships, Allah would make it
16 easier for you if you're sincere.

17 Q If you're sincere in what?

18 A Sincere adhering to Islam, the religion.

19 Q And make you steadfast in what?

20 A In your religion.

21 Q Read the next line.

22 A So these are inshaallah nothing but tests from Allah that
23 will either bring us close to Him or further away from us not
24 being patient and questioning his Magnifisence. So I ask you
25 didnt Allah make our way easy after the hardship we went

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1 through. The blessings we received from Allah was for our
2 patients Insha'Allah, your family forgave you send you money
3 everything we needed to comfort us.

4 Q What did you understand it to mean by the line your
5 family forgave you and send you money?

6 A That's when I was there, I started talking with my family
7 again and they started sending me money.

8 Q Could you read the next line?

9 A So if theyre not the reason of going back, what is? If
10 its school you can do it here and school over theyre as we
11 know shouldnt be attended.

12 Q What did you understand him to mean by that?

13 A That I told him I want to go back to make things right
14 with my family but -- I mean I guess he didn't believe it;
15 that I wanted to attend school over there and get a degree.
16 As before, we believed attending school in the states was
17 Haram, illegal, because of the free mixing.

18 Q The next line, repeat that to the jury.

19 A And we said some things also that we havnt fullfilled and
20 Allah says in the Quran:061.002 O ye who believe! Why say ye
21 that which ye do not?

22 Q What is it, your understanding that Mr. Kaziu is saying
23 to you when he says we said some things that we haven't
24 fulfilled?

25 A To my understanding, when I did read this, it was about

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1 our plans to go and fight Jihad.

2 Q If you could read the next line?

3 A Grievously odious is it in the site of God that ye say
4 that which ye do not.

5 Q Continue.

6 A So as Allah is my witness this is not a refutation but it's
7 a brother who loves and hates for the sake of Allah and I don't
8 want you making any mistakes which may Allah forgive me if I'm
9 wrong I see that in this situation you are in error, and if I'm
10 sincere insha'Allah your sincere in accepting the right from
11 the letter, and the benefits and the may Allah forgive me for
12 my mistakes.

13 Q What did you understand the first time Mr. Kaziu said
14 mistakes, what did he mean by that?

15 MR. STERN: Objection.

16 THE COURT: Sustained as to form.

17 Q What did you understand when you received this letter,
18 what did you understand Mr. Kaziu to mean by the term
19 "mistakes"?

20 A His own personal mistakes.

21 Q Is that the first time he says mistakes or the second
22 time he says mistakes?

23 A I believe in the sentences I was reading, that he writes
24 I believe two times.

25 Q I'll read the line. What did you understand Mr. Kaziu to

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1 mean when he said I don't want you making any mistakes, what
2 did you understand him to mean?

3 A That me going back to America.

4 Q Is that a mistake according to what Mr. Kaziu said?

5 A Yes.

6 Q If you read on from there?

7 A I don't want you making any mistakes which may Allah
8 forgive me if i;m wrong I see that in this situation you are
9 in error, and if im sincere insha'Allah your sincere in
10 accepting the right from the letter, and the benefits and the
11 may Allah forgive me for my mistakes. Make Istrkhara
12 sincerely and balance out what brings you closer to Allah
13 whats best for your deen and Fear Allah to the best of your
14 Ability. And consult those believers who are close to you"
15 (Allah says and consult them in the affair. Then when you
16 have taken a decision, put your trust in Allah.")

17 Q The word Ishtikara, is that the process you went through
18 in deciding to go back to the United States?

19 MR. STERN: Objection, asked and answered.

20 THE COURT: Overruled.

21 A Yes.

22 Q What is it in your understanding, what is it that
23 Mr. Kaziu is saying you should do Ishtikara about in this
24 letter?

25 A About going back to the states.

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1 Q What is he telling you you should do in this letter?

2 A Basically he's telling me I --

3 MR. STERN: Objection.

4 THE COURT: This is your understanding what he was
5 telling you?

6 THE WITNESS: Yes.

7 THE COURT: Overruled.

8 A Basically in this letter he's telling me what I'm doing
9 is wrong and that I should stay in Cairo, not go back to the
10 States and finish that which we said we were going to finish,
11 that being Jihad.

12 MR. ARIAIL: If I may offer on consent and publish
13 Government Exhibit 326?

14 THE COURT: Received and you may publish it.

15 Q Mr. Hadzovic, you recognize this document?

16 A Yes, I do.

17 Q What do you recognize this to be?

18 A This is the e-mail back to Betim.

19 Q Is there one e-mail --

20 A The top or bottom?

21 Q The earlier one.

22 A That's from Betim.

23 Q What's the date on that e-mail?

24 A June 24th, 2009.

25 Q When did you leave Cairo?

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1 A June 8th.

2 Q The last e-mail you looked at, what date is that?

3 A June 24th as well I believe -- no, June 22nd.

4 Q This e-mail comes two days after the last e-mail?

5 A Yes.

6 Q If you could read aloud the e-mail from Mr. Kaziu's to
7 you?

8 A Aselaamu 'Aleykum. Allah is the one who forgives the
9 sins so if it's a sin your worried about you turn to Allah and
10 make tawbah but going back to a country for this reason
11 doesn't make sense, and you not telling us the situation is
12 making it worse because we dont know why your going back. Now
13 we were always close we never held back on our secrets
14 especially matters that were big in the sight of Allah whats
15 the reason now?

16 Q Mr. Hadzovic, what did you understand when Mr. Kaziu says
17 we never held back on our secrets, especially matters big in
18 the sight of Allah?

19 A We always told each other everything.

20 Q What was the biggest secret between you and Betim Kaziu
21 in the sight of Allah?

22 A The biggest secret I would say was what we were going to
23 do by going and fighting Jihad.

24 Q Could you read to the jury your response above?

25 A Wa Aleykum Salam what can I say inshaallah may ALLAH

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1 forgive me for my wrong but its something I need to take care
2 of inshaallah I know you wouldnt understand it. So inshaallah
3 I ask to make dua for me.

4 Q What does it mean make dua for somebody?

5 A Invoke to God for him.

6 Q Mr. Hadzovic, when is the last time you saw Mr. Kaziu?

7 A In person?

8 Q Yes.

9 A In June of '09.

10 Q Where was he?

11 A Cairo airport.

12 Q When is the last time you talked to Mr. Kaziu?

13 A In August of '09.

14 Q Where was he?

15 A He was in Kosovo at that time.

16 Q Did he tell you who he was with in Kosovo at that time?

17 A Yes.

18 Q Who?

19 A With Blerim.

20 Q Who again is Blerim?

21 A The one that referred to as a friend that would be able
22 to get me into Pakistan.

23 Q For what purpose?

24 A For the purpose of fighting Jihad.

25 Q After you were approached by law enforcement --

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1 THE COURT: This seems like a separate subject
2 matter. Why don't we take our morning break now? About how
3 much longer?

4 MR. ARIAIL: Five minutes.

5 THE COURT: Finish up, sorry.

6 Q Mr. Hadzovic, after you were approached by law
7 enforcement, did there come a time that you were charged with
8 a crime?

9 A Yes.

10 Q What, again, was the charge, the crime that you were
11 charged with?

12 A Conspiracy to provide material support to terrorists.

13 Q What again is it that you did to be guilty of that
14 charge?

15 A Me and another conspired to go overseas and fight Jihad
16 in places like Pakistan, Afghanistan, Iraq, Somalia, Chechnya,
17 Palestine.

18 Q When you say another, who are you referring to?

19 A To Betim Kaziu.

20 Q What's the maximum sentence that you face for your
21 crimes?

22 A 15 years.

23 Q What's the minimum sentence you face?

24 A Zero.

25 Q Did you plead guilty to your crime or did you go to

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1 trial?

2 A I pled guilty.

3 Q Prior to pleading guilty, did you meet with an attorney?

4 A Yes, I did.

5 Q Did you meet with an attorney more than one time?

6 A Yes.

7 Q Without getting into what your attorney said, did he or
8 she give you legal advice?

9 A Yes.

10 Q After those consultations, did you make a decision as to
11 how you would approach your case?

12 A Yes.

13 Q What did you decide to do?

14 A Go into a cooperation agreement.

15 Q What's a cooperation agreement?

16 A It's an agreement between the person and the government.

17 Q How long after you were charged by the government did you
18 plead guilty?

19 A The same day.

20 Q Before you pled guilty, did anyone tell you what the
21 government's evidence was against you?

22 A No.

23 Q Why did you decide to plead guilty pursuant to a
24 cooperation agreement?

25 A Because when the agents came, my father told me, listen,

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1 son, just go and tell the truth to them and I figured this was
2 the right thing to do; that I came back here for the purposes
3 of going to school and getting married, living my life as a
4 normal person. This came about so I figured in order to make
5 things right, I'm going to do this.

6 Q Did you plead guilty?

7 A Yes, I did.

8 Q When did you plead guilty?

9 A In September of '09.

10 THE COURT: Exhibit number?

11 MR. ARIAIL: 3500 SH-2.

12 MR. ARIAIL: I offer on consent.

13 THE COURT: Received.) It's SH-2.

14 Q Mr. Hadzovic, you recognize this document?

15 A Yes, I do.

16 Q What is this document?

17 A This is the cooperation agreement.

18 Q I'll turn to the back page, page 2. Do you see your
19 signature on this document?

20 A Yes, I do.

21 Q Where is it?

22 A The bottom right above where it says Sulejmah Hadzovic in
23 fine print.

24 Q What is your understanding of your obligations under this
25 cooperation agreement?

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1 A That I have to always be truthful; that I can't share
2 this information with a third party unless the prosecutors are
3 notified; that I have to help the prosecutors in undercover
4 things if asked to do so and that I have to testify if I have
5 to do so, if asked to do so.

6 Q What's your understanding what the government has agreed
7 to do for you if you fulfill your obligations under the
8 cooperation agreement?

9 A They agree to write me a 5K letter.

10 Q What's a 5K letter?

11 A It's a letter from the government to Judge John Gleeson
12 stating all the wrong things I've done and all the right
13 things I've done.

14 Q What's your understanding of what the letter could enable
15 the judge to do?

16 A It can enable him to reduce the sentencing.

17 Q If you receive that letter from the government, what's
18 the minimum sentence that you can receive?

19 THE COURT: Excuse me. What's happening?

20 SECURITY OFFICER: . Her cell phone keeps going
21 off.

22 THE COURT: Oh.

23 Q Mr. Hadzovic, what is your understanding what that 5K
24 letter could do, could enable the judge to do?

25 A Could enable him to reduce my sentencing.

Hadzovic-direct-Ariail

530

1 Q If you receive that letter, what's the minimum sentence
2 that you could receive?

3 A Zero.

4 Q What's the maximum sentence that you could receive if you
5 get that letter?

6 A 15 years.

7 Q If the judge gets that letter from the government, does
8 the judge have to lessen your sentence?

9 A No, he doesn't.

10 Q Has the government made any promises to you as to what
11 your sentence ultimately will be?

12 A No, they haven't.

13 Q Sitting here today, do you know whether or not your
14 sentence will be reduced?

15 A No, I don't know.

16 Q At the end of the day, who is going to decide what your
17 sentence will be?

18 A Judge John Gleeson.

19 Q If you lie here today in court to the jury and to the
20 judge, what happens to you?

21 MR. STERN: Objection.

22 THE COURT: No, he could give his understanding;
23 overruled.

24 A If I lie here today, then I breach my agreement. I don't
25 receive the 5K letter. I can't take back my guilty verdict,

Hadzovic-direct-Ariail

531

1 providing material support to terrorist, additionally be
2 charged with other crimes.

3 MR. ARIAIL: Nothing further, your Honor.

4 THE COURT: Let's take our break. Don't discuss
5 the case. We'll resume in ten minutes. All rise.

6 (Jury leaves courtroom.)

7 THE COURT: Could I ask you to take the witness out?
8 Thank you.

9 (Witness leaves courtroom.)

10 THE COURT: Mr. Dratel, why don't you and as many
11 of the defendant's lawyers who would like come to side bar
12 with the defendant -- I'm going to speak to him ex parte
13 about this representation issue. Any objection?

14 MR. DuCHARME: No objection.

15 (Continued on next page; sealed record, pages 532-537.)
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Hadzovic-direct-Ariai1

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Hadzovic - cross - Stern

538

1 (Open court.)

2 THE COURT: Where is the witness?

3 MR. ARIAIL: Just outside.

4 THE COURT: I'll get the jury.

5 Are you ready, Mr. Stern?

6 MR. STERN: Yes.

7 (Jury present.)

8 THE COURT: Please be seated everyone.

9 (Witness resumes.)

10 THE COURT: Mr. Stern.

11 MR. STERN: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MR. STERN:

14 Q Good morning, Mr. Hadzovic.

15 A Good morning.

16 Q Mr. Hadzovic, it is my understanding, and you correct me
17 if I'm wrong, that you didn't come an observant Muslim until
18 you were about 16 or 17, is that right?

19 A Seventeen, correct.

20 Q How old are you now?

21 A Twenty-one.

22 Q So in the four years that you have been an observing
23 Muslim you've learned all the things you've been talking to us
24 about, right?

25 A Yes.

Hadzovic - cross - Stern

539

1 Q You learned about Shariah?

2 A Some of it, yes.

3 Q Jihad?

4 A Yes.

5 Q All the different speakers you mentioned, Al-Awlaki and
6 the Mufti of Saudi Arabia?

7 A Yes.

8 Q You also studied Arabic and learned some Arabic, right?

9 A Yes.

10 Q In addition, you speak Serbo-Croatian, don't you?

11 A Yes.

12 Q And you speak English?

13 A Yes.

14 Q So it would be fair to say about you that you're a person
15 who learns things pretty quickly, right?

16 A Sometimes. It depends on what.

17 Q All these things we have talked about you learned
18 quickly, didn't you?

19 A Parts of it, yes.

20 Q There are people who studied much longer you who don't
21 know as much as you know about Islam, isn't that fair to say?

22 A Yes.

23 Q Okay. You and I until today here in court have never
24 spoken to one another, have we?

25 A Correct.

Hadzovic - cross - Stern

540

1 Q But today -- or yesterday -- was not the first time
2 you've spoken to people from the government, was it?

3 A Correct.

4 Q You've spoken to them many, many times, haven't you?

5 A Correct.

6 Q You've spent hours and hours preparing for your testimony
7 here, hadn't you?

8 A Yes.

9 Q And every single question you were asked here you had
10 heard before from the government, right?

11 A Every single question?

12 Q Yes.

13 A Yes.

14 Q And every single document you saw in here you've been
15 shown by the government, right?

16 A Every single one?

17 Q Yes.

18 A Seen today?

19 Q Every single document you saw during the time you were
20 testifying here you had seen before the time you testified,
21 hadn't you?

22 A Correct.

23 Q And the government had asked you what you're going to say
24 about this document; correct?

25 A No. They asked me what is this document, what does it

Hadzovic - cross - Stern

541

1 say and I told them what I thought it meant.

2 Q Did they direct you to certain parts of the document and
3 ask you about that?

4 A We went through the whole thing and I told them about the
5 whole thing.

6 Q Well, you remember the last document you looked at, you
7 were directed to part by part, right?

8 A Correct.

9 Q And they did that with you outside of court too, didn't
10 they?

11 A Yes.

12 Q So that everything you did here in court had been
13 rehearsed before you came to court, hadn't it?

14 A In terms of documents --

15 Q In terms of every single thing you did, right?

16 A Yes.

17 Q But I've never had a chance to rehearse with you, have I?

18 A No.

19 Q Did the government tell you these are things you might be
20 asked by the defense lawyers to get you ready for talking to
21 me?

22 A Yes.

23 Q And so that was another part of your rehearsing to being
24 here was preparing to deal with the lawyers for Betim Kaziu,
25 right?

Hadzovic - cross - Stern

542

1 A Correct.

2 Q Now, you told us, I think, that you were friends with
3 Betim from childhood, right?

4 A Pretty much, yes.

5 Q From when you were 6 or 7-years-old?

6 A No. From in the sixth grade I met him and in seventh
7 grade we became good friends.

8 Q And he had been left back a grade, right?

9 A I believe so, yes.

10 Q He's a year older than you, isn't he?

11 A Yes.

12 Q But he was in the same grade as you?

13 A Yes.

14 Q And in addition to knowing Betim, you knew all the
15 members of his family, right?

16 A Yes.

17 Q You'd been to his house?

18 A Yes.

19 Q You had eaten with his family?

20 A With his family?

21 Q Yes.

22 A I ate with him. Not with his father and mother, no.

23 Q You knew his mom?

24 A Yes.

25 Q You knew his dad?

Hadzovic - cross - Stern

543

1 A Yes.

2 Q You knew his sister?

3 A Yes.

4 Q You knew his brother?

5 A Yes.

6 Q You knew all of those people during the time you and he
7 were friends, right?

8 A Correct.

9 Q And another thing you two did together was to begin to
10 become increasingly religious, right?

11 A Correct.

12 Q That was something that you started a little bit before
13 him, didn't you?

14 A We started together.

15 Q And the two of you began to go to mosques; you talked
16 about that?

17 A Correct.

18 Q And there came a time when a very important thing
19 happened, the two of you went to Mecca, right.

20 A Yes, we made Umrah.

21 Q That is not the same as Hajj, it?

22 A No, it's like a lesser Hajj.

23 Q You went there with a bunch of other men from your
24 community, didn't you?

25 A Yes.

Hadzovic - cross - Stern

544

1 Q And you went there and were there for how long?

2 A I think about three weeks.

3 Q When you were there you heard people speaking, right?

4 A Correct.

5 Q You heard people giving lectures?

6 A Correct.

7 Q You saw sites?

8 A In Saudi?

9 Q Yes.

10 A The sites like buildings and stuff?

11 Q Holy sites?

12 A Yes.

13 Q And when you came back you and other people began to talk
14 about issues involving Islam, didn't you?

15 A Yes.

16 Q And those discussions were wide-ranging, by which I mean
17 they touched on a lot of issues involved in Islam, didn't
18 they?

19 A Correct.

20 Q And one of the things people talked about was their
21 mistrust of the United States, didn't they?

22 A Correct.

23 Q People would talk about, for example, how the United
24 States was oppressing Muslims around the world?

25 A Yes.

Hadzovic - cross - Stern

545

1 Q And it wasn't just you who talked about that, was it?

2 A No.

3 Q Lots of people talked about it?

4 A Yes.

5 Q Lots of people in the Muslim community talked about it?

6 A That's correct.

7 Q People preached about it?

8 A Yes.

9 Q People were concerned that the U.S. had some kind of
10 antiMuslim bias, right?

11 A So we believed, yes.

12 Q And you also, I think, began to have concerns about being
13 yourself a Muslim in America, didn't you?

14 A Correct.

15 Q You had a beard, right?

16 A Yes.

17 Q And did you do anything else that distinguished you from
18 other people?

19 A I had a beard and I had short pants.

20 Q Anything else?

21 A I didn't drink alcohol, I didn't eat pork, I didn't go
22 clubbing, have sexual intimacy with girls prior to marriage.
23 I prayed, I went to the masjid. I fasted during the month of
24 Ramadan.

25 Q Did your family share your religiosity?

Hadzovic - cross - Stern

546

1 A Not all of them were observants, but some of are, yes.

2 Q You began to be concerned, am I right, that somehow
3 something might happen to you here, the police for example
4 would look more carefully at you?

5 A Can you repeat that once more.

6 Q Did you begin to be concerned that because of the way you
7 looked and the way you behaved you might be persecuted by the
8 police in the United States?

9 A Yes.

10 Q You thought you might be stopped more frequently, right?

11 A Correct.

12 Q Interrogated more frequently?

13 A Correct.

14 Q And you really did not like those things, did you?

15 A Correct.

16 Q And that was another thing that you and your friends
17 talked about, wasn't it?

18 A Correct.

19 Q And you and your friends and people who preached in
20 mosques talked about that, didn't they?

21 A Yes.

22 Q You also began to learn, I take, it about Shariah, right?

23 A I mean I really never studied Shariah thoroughly.

24 Q You gave us here a little lecture about Shariah, didn't
25 you?

Hadzovic - cross - Stern

547

1 A Of the things I knew about Shariah, yes.

2 Q So you told us, for example, about the penalty for murder
3 was death?

4 A Correct.

5 Q And you told us about the penalty for adultery, right?

6 A Yes.

7 Q You told us about the penalty for drinking?

8 A Yes.

9 Q But Shariah has many, many other laws, doesn't it?

10 A Yes.

11 Q For example, there is a law involving the taking of
12 interest, right?

13 A Yes.

14 Q What is that law?

15 A That it's harm to take interest.

16 Q There's laws about lying, aren't there?

17 A Laws about lying?

18 Q Lying, are you allowed to lie in Islam?

19 A If you're life is on the line.

20 Q If your life is on the line, otherwise no?

21 A Otherwise, you should not lie, no.

22 Q You can't lie just for your own advantage, right?

23 A No.

24 Q You can't lie just to avoid unpleasantness, right?

25 A Avoid unpleasantness?

Hadzovic - cross - Stern

548

1 Q Right?

2 A No. Not to my knowledge you can't do that.

3 Q You could only lie if it involves saving yourself from
4 death; correct?

5 A Yes.

6 Q And there's also rules about your interactions with your
7 parents, aren't there?

8 A Yes.

9 Q What are those rules?

10 A That you should obey your parents on all things that are
11 permissible and not do things illegal. For example, if your
12 parents tell you to go get them a case of alcohol, then you
13 shouldn't listen to them.

14 Q It is not illegal for parents to say to their child "stay
15 home," is it?

16 A It's not illegal, no.

17 Q It's not haram?

18 A No.

19 Q And so under the laws of Shariah, the laws of Islam, if
20 your parents told you that, you should do it, shouldn't you?

21 A Correct.

22 Q Now, one of the things you talked about with specific
23 people I think you said was jihad, right?

24 A What was the question?

25 Q Did you talk to people about jihad?

Hadzovic - cross - Stern

549

1 A Yes.

2 Q It was a common conversation, wasn't it?

3 A Correct.

4 Q And lots of people were downloading information from the
5 Internet about that, right?

6 A Yes.

7 Q And lots of people were listening to lectures, weren't
8 they?

9 A Yes.

10 Q And there were pictures, some of which were extremely
11 well-known, right?

12 A Yes.

13 Q For example, there was a picture of a young child facing
14 down tanks, you've seen that picture, haven't you?

15 A With the rock in his hand?

16 Q Yes.

17 A Yes, I have.

18 Q You have seen it many, many times, right?

19 A Yes.

20 Q And that is the kind of picture that is circulated in the
21 observant Islamic community, isn't it?

22 A I don't really know.

23 Q Well, how many times have you seen that picture?

24 A Plenty of times.

25 Q Where?

Hadzovic - cross - Stern

550

1 A On the Internet.

2 Q And do you know if other people have seen it or not?

3 A Usually the people I hang out at that time was Betim,
4 Adem, Sead, my brother Amal. We saw that picture plenty of
5 times.

6 Q And people also were very impressed by the mujahideen,
7 weren't they?

8 A Yes.

9 Q And you learned a lot about mujahideen, right?

10 A Correct.

11 Q You learned what they were doing?

12 A Yes.

13 Q Where they were fighting?

14 A Yes.

15 Q You saw heroic pictures of them, didn't you?

16 A Yes, I can.

17 Q Pictures of them on horseback, right?

18 A Yes.

19 Q Pictures of them firing weapons?

20 A Yes.

21 Q And you were very impressed by all of that, weren't you?

22 A Yes, I was.

23 Q And you weren't alone in that, were you?

24 A No, I wasn't.

25 Q Lots of people were impressed by the mujahideen?

Hadzovic - cross - Stern

551

1 A Correct.

2 Q Now, you've talked some here about what jihad is and you
3 talked about it in terms of fighting in a war, right?

4 A Correct.

5 Q But that's not the only meaning of jihad, is it?

6 A No, it isn't.

7 Q Jihad also can be self-defense or a fight against
8 temptation such as alcohol and adultery, right?

9 A Yes. The inner struggle.

10 Q It's used in both those senses, in the personal sense,
11 which we all do every day, right?

12 A Yes.

13 Q And in the warrior sense, correct?

14 A No.

15 Q It's not used in the warrior sense?

16 A In a sentence?

17 Q I'm sorry. I might have said sentence. I meant sense.

18 A Yes. Jihad can be used for both those.

19 Q Okay. You talked about and were shown a video of someone
20 named Khattab, right?

21 A Yes.

22 Q And he was one of the people who impressed you when you
23 saw the video, right?

24 A Correct.

25 Q In that video we saw, do you know who it was that Khattab

Hadzovic - cross - Stern

552

1 was fighting?

2 A To my understanding, it was the Russians.

3 Q And there's lots of pictures, aren't there, of early
4 mujahideen in Afghanistan, correct?

5 A Yes.

6 Q And who were the early mujahideen in Afghanistan
7 fighting?

8 A The Russians.

9 Q You also talked, I think, about a belief that Muslims
10 have that every day, every minute might be your last; correct?

11 A Correct.

12 Q And is it fair to say that in Islam people believe that
13 your time is up when Allah says it's up, right?

14 A Correct.

15 Q So that you don't know if as you're sitting here now
16 you're going to guy or you're going to live to be a hundred?

17 A Correct.

18 Q Every Muslim lives with that every single day, right?

19 A Correct.

20 Q And it informs everything they do, this idea that life is
21 temporal and you might lose it, you might not, and it's not
22 your control?

23 A Correct.

24 Q Now, you even were with people who spoke about killing,
25 weren't you?

Hadzovic - cross - Stern

553

1 A Yes.

2 Q And there was a time after you got back from Saudi Arabia
3 when people were sitting around discussing a Danish
4 cartoonist. Do you know what I'm talking about?

5 A Yes.

6 Q That is a Danish cartoonist who published cartoons that
7 mocked the Prophet Muhammad, right?

8 A Correct.

9 Q And you were part of a conversation, and people were
10 talking and saying what should be done with this person, this
11 cartoonist who mocked the Prophet Muhammad; remember that?

12 A Yes, I do.

13 Q And some people were saying he should be killed, weren't
14 they?

15 A Correct.

16 Q And you were one of the people saying he should be
17 killed, right?

18 A Correct.

19 Q But when you said that you didn't really mean it, did
20 you?

21 A At that time I did mean it.

22 Q You did?

23 MR. STERN: I'd like to show, this if I may, to the
24 witness.

25 THE COURT: Yes.

Hadzovic - cross - Stern

554

1 MR. ARIAIL: Objection, your Honor.

2 THE COURT: Overruled.

3 MR. STERN: 3528.

4 Q I want you to read the part marked in yellow and look up
5 when you're done.

6 A Okay. It says --

7 THE COURT: No aloud, to yourself.

8 (Pause.)

9 A Yes.

10 Q You were at a meeting with a detective named Hugh Smith
11 on February 28, 2011, weren't you?

12 A I believe so, yes.

13 Q At that meeting you talked about this conversation you
14 had about the Danish cartoonist, right?

15 A I believe so.

16 Q And at that meeting you said -- you advocated him being
17 killed, didn't you?

18 A Yes, I did.

19 Q And then you said, I wasn't thinking about actually
20 killing this cartoonist myself, right?

21 A Correct.

22 Q And you weren't conspiring with anyone to kill that
23 cartoonist, were you?

24 A No, I wasn't.

25 Q It was just talk?

Hadzovic - cross - Stern

555

1 A I said that he should be killed. I didn't say that I
2 should kill him, that he should be killed, that his actions
3 should be killed.

4 Q Was it just talk?

5 A At that time, yes.

6 Q You didn't make plans?

7 A No.

8 Q Didn't go buy a gun?

9 A No.

10 Q Didn't travel to Denmark?

11 A No.

12 Q Didn't do anything to make that happen, did you?

13 A No.

14 Q After you became religious, more religious I guess is a
15 fair way to say it, right?

16 A Yes.

17 Q You took very seriously your obligation to follow
18 strictly the laws of Islam, didn't you?

19 A Correct.

20 Q And at that time you were a student at La Guardia
21 Community College, right?

22 A Yes.

23 Q And one of the requirements at La Guardia was that you
24 take a humanities class, wasn't it?

25 A Humanity?

1 Q Yes.

2 A Yes.

3 Q So you signed up for a class called Introduction to
4 Music, didn't you.

5 A Yes.

6 Q And after you signed up for the class, you found out that
7 in Introduction to Music you would have to listen to music?

8 A Correct.

9 Q And you wrote your professor an outraged letter, right?

10 A Yes.

11 Q You said, How in the world can you be asking me to listen
12 to music in a class called Introduction to Music, didn't you?

13 A Something like that, yes.

14 Q And he wrote you back and he said, Well, I have trouble
15 really understanding your saying. This is a class called
16 Introduction to Music, to which you responded, It should have
17 been called Listening to Music, then I would have known it's
18 haram to listen to music and I'm telling people they shouldn't
19 take your class. Right?

20 A Something like that. I would actually have to read it to
21 say the exact words.

22 Q But that's the idea, isn't it?

23 A Yes.

24 Q And that was because you were doing your best to strictly
25 adhere to the laws of Islam?

Hadzovic - cross - Stern

557

1 A Correct.

2 Q I want to talk to you about the time just before you left
3 to go to Cairo, all right?

4 A Okay.

5 Q And at that time you were also trying to strictly follow
6 the laws of Islam, weren't you?

7 A Correct.

8 Q How does Islamic law feel about cursing?

9 A That you shouldn't curse.

10 Q How does Islamic law feel about cursing your parents?

11 A That's a big sin.

12 Q So at that time you did however curse your parents,
13 right?

14 A Yes, I did.

15 Q And you did that knowing it was a violation of Islamic
16 law?

17 A At that time I believed that by doing that that it was
18 the right thing because they were not allowing me to leave
19 this country in which I said that it was hard to live in.

20 Q What you believed at that time, I take it, was that if
21 your parents won't let you do what you want, Islamic law
22 allows you to curse them?

23 A No.

24 Q So what you did was haram, wasn't it?

25 A Yes, it was.

Hadzovic - cross - Stern

558

1 Q And you knew it?

2 A Yes.

3 Q And you did it anyway?

4 A Yes.

5 MR. ARIAIL: Your Honor, just in terms of the
6 clarity as to when he knew it?

7 THE COURT: Overruled.

8 Q Did you know it when you did it?

9 A Prior to going to Cairo, I would say in December,
10 probably, of '08.

11 Q I'm not asking when you did it. I'm asking if at the
12 time, you cursed at your parents you knew it was haram, didn't
13 you?

14 A Yes.

15 Q You weren't under any illusion that was okay?

16 A No.

17 Q You began talking about leaving to go to Cairo, hijrah, a
18 few months before you actually went, didn't you?

19 A Yes.

20 Q And you talked about going to Pakistan, right?

21 A Betim spoke about going to Pakistan, yes.

22 Q It's cheaper to study in Pakistan, isn't it?

23 A Yes.

24 Q And you talked about going to other places, right?

25 A Saudi Arabia, yes.

Hadzovic - cross - Stern

559

1 Q But you didn't have any actual plans, did you?

2 A For what?

3 Q To leave when you started talking about it?

4 A At the very beginning, no.

5 Q You didn't have an agreement with anybody, right?

6 A At the very beginning, no.

7 Q And at some point after you had this fight with your
8 parents you decided to leave kind of on the spur of the
9 moment, right?

10 A About a month or two after.

11 Q That fight was really what pushed you to leave, wasn't
12 it?

13 A Not really. No to leave for -- I'm sorry, to leave for
14 jihad or for hijrah?

15 Q What happened was, you had a fight with your parents
16 because you weren't doing your work well, isn't that right?

17 A My work?

18 Q Your work.

19 A School? I'm a little bit confused. What work?

20 Q You tell me. What did you fight with your parents about?

21 A That I wanted to leave from the U.S. to go overseas and
22 make hijrah.

23 Q You had a meeting on August 28th at 1:15, right?

24 A Yes.

25 Q And that was with detectives Lamendola and -- I may say

Hadzovic - cross - Stern

560

1 it wrong -- Mazzei -- but something like that, wasn't it?

2 A Yes.

3 Q Didn't you tell them, My parents were upset with me that
4 I wasn't doing my work well?

5 A My work well?

6 Q Your work, yes. Did you tell them that, yes or no?

7 A Can you show the paper?

8 Q I'm just asking you. Did you ever tell the detectives
9 that the reason you left, the reason you fought with your
10 parents was because you weren't doing your work well?

11 A I wasn't going to school at that time. That was part of
12 it, yes.

13 Q And after you began fighting with them was the first time
14 you had serious plans to leave, wasn't it?

15 A No. I think even prior to that we started speaking, but
16 I'm not sure.

17 Q When was the first time you had serious plans to leave,
18 not just talk, real plans to leave?

19 A We started talking and making intentions for it I would
20 say in December, December, January of '08, '09.

21 Q The reason you left was mainly for hijrah, wasn't it?

22 A It was one of the reasons, yes.

23 Q And even when you left, even when you left the United
24 States, you had not decided for sure to take up arms against
25 anyone, had you?

Hadzovic - cross - Stern

561

1 A No. We did make that intention that we were going to do
2 this.

3 Q You're sure of that?

4 A Yes.

5 Q And had you thought about taking up arms against any
6 particular person or particular country?

7 A We spoke about a lot of countries. We spoke about
8 Afghanistan, Iraq, Somalia, Chechnya, Israel.

9 Q It wasn't just a possibility, you had actually reached an
10 agreement with Betim Kaziu to do that; is that right?

11 A Yes.

12 Q So if I said it was only possible that would be wrong;
13 correct?

14 A It was only possible for what? I'm sorry.

15 Q To fight, it was only a possibility -- I would be wrong,
16 wouldn't I?

17 A Only a possibility? I mean we intended to go. The way
18 it went over there is a different story.

19 Q You recall your plea, don't you?

20 A My plea?

21 Q When you pled guilty?

22 A Yes.

23 Q That was a very important time in your life, wasn't it?

24 A Yes, it was.

25 Q Because you knew you were pleading guilty to something

Hadzovic - cross - Stern

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1 that at that moment could get you up to 15 years in jail,
2 right?

3 A That was part of it, yes.

4 Q And you had never pled guilty to a crime before, had you?

5 A One time I was arrested for trespassing and I got
6 six-month ACD.

7 Q ACD is not crime.

8 A Unsupervised probation.

9 Q So this was the first time you pled guilty to a crime,
10 wasn't it?

11 A Yes.

12 Q You had consulted with your lawyer, hadn't you?

13 A Yes.

14 Q And you had talked to the prosecutors, right?

15 A Yes.

16 Q And you came into a courtroom much like this one, didn't
17 you?

18 A I think this exact one.

19 Q And you appeared in front of a judge, correct?

20 A Yes.

21 Q And it was stressed how important it was that you tell
22 the truth, wasn't it?

23 A Yes.

24 Q And so when you stood there at that momentous time you
25 were determined to tell the truth; correct?

Hadzovic - cross - Stern

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1 A Correct.

2 Q You were under oath then like you're under oath now,
3 weren't you?

4 A Yes.

5 Q Sir, were you asked this question and did you give this
6 answer, from page 19 line six: The court: Tell me what you
7 did that makes you guilty. The defendant, you: Middle to end
8 of January, 2009 me and a friend, we planned to go to Cairo,
9 Egypt. At that time it was for migration but as well as
10 migration it was also to go to Cairo, after studying there to
11 go to Somalia and possibly take up arms against the opposing
12 army.

13 Were you are asked that question and did you give
14 that answer, yes or no?

15 A Sounds almost accurate, yes..

16 Q Well, let see if it's exactly accurate.

17 THE COURT: You can put it on the screen.

18 (Pause.)

19 A Correct.

20 Q So every word I read was accurate, wasn't it?

21 A I believe so.

22 Q And those were your exact words under oath at your plea,
23 weren't they?

24 A If I was under oath, yes.

25 Q Now, I want to talk to you now about the time when you

Hadzovic - cross - Stern

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1 arrived in Cairo. Okay?

2 A Okay.

3 Q By the way, before you went to Cairo, had you ever lived
4 on your own?

5 A Lived on my own?

6 Q Yes.

7 A No.

8 Q Had your own apartment?

9 A No.

10 Q Your own house?

11 A No.

12 Q So when you had dinner who made dinner for you?

13 A My mom.

14 Q And who went food shopping?

15 A My parents.

16 Q Who cleaned the house?

17 A My mom.

18 Q Who owned the car?

19 A My father.

20 Q So everything you had was provided to you, is that fair
21 to say?

22 A Yes.

23 Q And now you were going to Cairo and you were going to be
24 on your own, weren't you?

25 A Yes.

Hadzovic - cross - Stern

565

1 Q And other than a trip to Mecca, had you traveled -- and
2 Plav, had you traveled outside the United States?

3 A Other than those two trips.

4 Q Correct.

5 A No.

6 Q When you went to Plav did you go by yourself?

7 A I went with my uncle.

8 Q And when you went to Saudi Arabia you went with a group
9 of people on a kind of tour, right?

10 A Yes.

11 Q So now it's just and your old friend Betim all alone,
12 wasn't it?

13 A Yes.

14 Q You did this momentous thing, you got on plane without
15 telling your family, right?

16 A Correct.

17 Q You basically lied to your parents, didn't you?

18 A Yes, I did.

19 Q And you flew off to Cairo?

20 A Yes.

21 Q It's kind of a long trip, isn't it?

22 A About nine hours flight.

23 Q And as soon as you got to Cairo you did not like it, did
24 you?

25 A Not at first, I didn't like it at all.

Hadzovic - cross - Stern

566

1 Q It wasn't dirty?

2 A Right.

3 Q And you couldn't speak the language?

4 A Correct.

5 Q From almost the very beginning you were unhappy there,
6 weren't you?

7 A Yes.

8 Q And almost as soon as you got there you began writing
9 letters to friends and family, or e-mailing friends and
10 family, right?

11 A Yes.

12 Q So, for example, you wrote to Adem Husseinovic, right?

13 A Oh, yes. Sorry.

14 Q And you didn't talk to him at all about jihad, did you?

15 A In those conversations?

16 Q In that e-mail, yes.

17 A No, I don't think so, no.

18 Q And you didn't talk to him about going to any other
19 country, right?

20 A No.

21 Q You wrote him on February 22nd of '09. How long had you
22 been in Cairo by then?

23 A I think it was the first day.

24 Q You said, Wow, it's hard being here; right?

25 A Yes.

Hadzovic - cross - Stern

567

1 Q And then you talked a little about the apartment, didn't
2 you?

3 A Yes.

4 Q You talked about the masjid you were going to?

5 A Yes.

6 Q You talked about your language lessons, right?

7 A Yes.

8 Q And you were taking private language lessons, weren't
9 you?

10 A Yes.

11 Q And you gave him your cellphone number?

12 A Yes.

13 Q You didn't say anything about obligations to fight, did
14 you?

15 A No.

16 Q Obligations to travel?

17 A No.

18 Q Just chitchat, right?

19 A Correct.

20 Q And on that same day you wrote Eralda?

21 A Yes.

22 Q Who is Eralda?

23 A My sister.

24 Q I think this hijrah, this migration, usually means when
25 you go somewhere you intend to stay there?

Hadzovic - cross - Stern

568

1 A Correct.

2 Q And that was your plan you say, right?

3 A Part of my plan.

4 Q And it's not just lying to parents that is haram, it's
5 lying to anyone unless your life is at stake, right?

6 A Yes.

7 Q And that includes your family members?

8 A Correct.

9 Q So you wrote your sister and you said, Hiralda, I'll be
10 back before you know it. Right?

11 A Yes.

12 Q But in your mind that was a lie, wasn't it?

13 A Yes, it was.

14 Q You weren't planning to come back at all?

15 A Correct.

16 Q And so in the first e-mail the day you got there you
17 wrote something out and it was a lie that you wrote to your
18 sister, to your family member, correct?

19 A Yes.

20 Q And you had told her, I just want to finish my studies
21 and then I'll be back. Right?

22 A Yes.

23 Q Another lie, correct?

24 A Yes.

25 Q And you gave her a cell number, right?

Hadzovic - cross - Stern

569

1 A Yes.

2 Q And the phone number of the house you are were at?

3 A Yes.

4 Q You weren't concerned about her calling you there?

5 A No.

6 Q It was okay, right?

7 A Yes.

8 Q And on your phone you got and received calls, right?

9 A Right.

10 Q Because you wanted to receive calls from your family.
11 You loved them?

12 A Of course.

13 Q You missed them?

14 A Yes.

15 Q The next day you wrote her again, right?

16 A I think so. I'm not sure.

17 Q Well, didn't you write her again and say, It's terribly
18 hard for me here in Egypt without my family?

19 A Yes.

20 Q I'm sad and I feel like just going back.

21 A Yes.

22 Q So on your second day there, you had already begun to
23 think, I should go home, right?

24 A The first week, yes. I was emotional, yes.

25 Q And then you had told her another lie, right, you said, I

Hadzovic - cross - Stern

570

1 should be back by the summertime?

2 A Yes.

3 Q So in the first two days there you wrote your sister
4 twice and lied to her both times?

5 A Correct.

6 Q You also contacted your parents, right?

7 A Yes, I did.

8 Q And you told your parents that you were in Cairo to study
9 Arabic at the El Fajr Center, correct?

10 A Yes.

11 Q And then you hoped to go to Al-Azhar?

12 A Yes.

13 Q What is Al-Azhar?

14 A Like a private school.

15 Q It's a university, isn't it?

16 A Yes.

17 Q The oldest university in the world?

18 A Yes.

19 Q And a very prestigious place to go to school, right?

20 A Correct.

21 Q And you wanted your parents to say, Oh, at least our son
22 is doing something useful, something good, right?

23 A Did I want them to say that?

24 Q Did you want your parents to say that when you told them
25 you were going to go to Al-Azhar?

Hadzovic - cross - Stern

571

1 A Yes.

2 Q It's a prestigious thing to do?

3 A Yes.

4 Q Like the Harvard of Egypt?

5 A Yes.

6 Q What you told your parents was at least in part the
7 truth, wasn't it?

8 A Yes.

9 Q You were there taking language lessons?

10 A Correct.

11 Q You were going five days a week?

12 A Yes.

13 Q Three hours a day?

14 A Yes.

15 Q And struggling to learn Arabic, right?

16 A Yes.

17 Q And Arabic is the language of Islam, isn't it?

18 A Yes, it is.

19 Q What language is the Koran written in?

20 A Arabic.

21 Q To read the Koran, to be a fully religious person, you
22 need to know Arabic, right?

23 A Yes.

24 Q It's not written in Pashtun?

25 A Right.

Hadzovic - cross - Stern

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1 Q Not written in Urdu?

2 A No.

3 Q And so it's useful for that, but countries that don't
4 speak Arabic, not useful, fair to say?

5 A I mean there are translations, but the true meaning of
6 the words you can only understand in Arabic.

7 Q And one of the things you did when you got to Cairo was
8 you went to the U.S. embassy, right?

9 A Yes.

10 Q You weren't afraid to do that?

11 A No.

12 Q You weren't worried they would do something to you
13 because of the way you looked?

14 A No.

15 Q And you went there to get some kind of certificate to
16 allow you to further your studies in Egypt, right?

17 A Correct.

18 Q And you got that certificate?

19 A Yes, I did.

20 Q And so did Betim, right?

21 A Yes.

22 Q By the way, you talked about names people have, like and
23 Abdur Rachman -- what does that mean, by the way?

24 A The slave of the most Merciful.

25 Q Slave of God?

Hadzovic - cross - Stern

573

1 A Yes.

2 Q And is it usual for men in Arabic speaking countries to
3 have names like that?

4 A No, it's not unusual.

5 Q Many, many people have them, right?

6 A Yes.

7 Q Sometimes they signify the country you're from, don't
8 they?

9 A Yes.

10 Q For example, Al-Albani means what?

11 A The Albanian.

12 Q Al-Amriki means what?

13 A The American.

14 Q And Abu-Betim means what?

15 A The father of Betim.

16 Q And people use those kind of names, right?

17 A Yes, as nicknames.

18 Q They're not aliases to hide out from anybody, are they?

19 A No.

20 Q They are the names that people in Arabic countries
21 normally and traditionally use, fair to say?

22 A Yes.

23 Q Okay. Now, you talked about a lot of plans you had. You
24 talked about Afghanistan, right?

25 A Yes.

Hadzovic - cross - Stern

574

1 Q Somalia?

2 A Correct.

3 Q Palestine?

4 A Yes.

5 Q Somewhere in the Balkans?

6 A Yes.

7 Q Afghanistan?

8 A Yes.

9 Q Did I say Afghanistan already?

10 A Yes.

11 Q Sorry.

12 A Sorry.

13 Q You talked about a bunch of different places you wanted
14 to go. And one of the people you said was going to help you
15 with that was a person named Ahmed, right?

16 A Correct.

17 Q Ahmed was a person who you say could hook you up with
18 Al-Shabaab, right?

19 A His relative could hook us up with Al-Shabaab.

20 Q And Ahmed was a person who you were the first one to
21 meet, wasn't he?

22 A Me and Betim both met him at Mosque El Quddes.

23 Q Isn't it true that you talked to Agent Stefanie Roddy on
24 March 31st of 2011?

25 A Yes.

Hadzovic - cross - Stern

575

1 Q And you told her that you walked up to him in the mosque,
2 right?

3 A Me and Betim, we both approached him.

4 Q Did you tell Agent Roddy you and Betim both approached
5 him?

6 A Yes.

7 Q You're sure of that?

8 A Yes.

9 MR. ARIAIL: Your Honor, could defense counsel
10 identify the document that he's referring to?

11 MR. STERN: 3500 SH 30. Sorry.

12 Q Did you ask him if he could find you a wife; right?

13 A Yes.

14 Q You didn't mention Betim, didn't you?

15 A Me and Betim both wanted Somalian wives.

16 Q You would hang out with him a lot, right?

17 A Yes, me and Betim would hang out with him.

18 Q But you didn't mention Betim to Agent Roddy, did you?

19 A I didn't mention Betim to Agent Roddy?

20 Q Right.

21 A Who is Agent Roddy? I'm sorry.

22 Q When you were talking whoever it was you were talking to
23 on March 31st, you never mentioned doing things with Betim
24 when you were meeting with Ahmed, did you?

25 A No. I believe I did.

Hadzovic - cross - Stern

576

1 Q Let me show you this document and see if that refreshes
2 your recollection. You can look at the part -- this is just
3 for the witness.

4 MR. ARIAIL: Objection.

5 THE COURT: Sustained.

6 Q Do you have a clear recollection of what you said that
7 day? Don't look at this.

8 A No. I don't remember the questions, really. We met so
9 many times over two years that I can't remember.

10 Q So let me show you this document. I want to you look at
11 the part marked in yellow. Read it and look up at me when
12 you're done.

13 A I'm done.

14 Q Does that refresh your recollection whether or not you
15 mentioned Betim while talking about your meetings with Ahmed?

16 A I'm pretty sure I mentioned Betim, but I had never seen
17 the document before this day.

18 Q I'm not asking about the document. I'm asking about your
19 recollection.

20 A My recollection is that I did talk to the agent that me
21 and Betim spoke to Ahmed and asked Ahmed for Somali wives.

22 Q Now, you didn't really know if Ahmed knew anyone who was
23 involved with Al-Shabaab, did you?

24 A Not at the start, no.

25 Q You never really knew, did you?

Hadzovic - cross - Stern

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1 A I mean he said he could help us find a relative that
2 could help us get to Al-Shabaab in Somalia.

3 Q Isn't it fair to say that you believed everyone in
4 Somalia knows about Al-Shabaab but you could only speculate
5 about Ahmed cousin's being a member of Al-Shabaab; did you say
6 that, yes or no?

7 A I can't remember.

8 Q Let me show you this document, 3500 SH 30 --

9 MR. ARIAIL: Your Honor, objection.

10 THE COURT: Yes.

11 MR. ARIAIL: If he could ask one more question.

12 THE COURT: Overruled.

13 Q I want to you read the part in yellow and tell me if that
14 refreshes your recollection about whether or not you said
15 that.

16 A I've read it. I mean, I did say everyone in Somalia does
17 know about Al-Shabaab. If Ahmed's cousin being a member of
18 Al-Shabaab, I had never met him so of course I wouldn't
19 speculate on that.

20 Q You had no idea, did you?

21 A No.

22 Q You talked some about this JustVoip software, right?

23 A Yes.

24 Q And that's not a secret kind of software, is it?

25 A No.

Hadzovic - cross - Stern

578

1 Q It's like Skype, right?

2 A Yes.

3 Q If someone wants to make -- is it cheap or free calls,
4 which is it?

5 A Cheap calls.

6 Q Then anyone can put JustVoip on their computer, correct?

7 A Correct.

8 Q And it allows you to make calls all around the world?

9 A Yes.

10 Q And lots and lots and lots of people have that?

11 A Yes.

12 Q And you used it to make just regular phone calls, didn't
13 you?

14 A Yeah. I called my family and others.

15 Q So there was nothing bad, there was nothing evil, there
16 was nothing criminal about having JustVoip software on your
17 computer, was there?

18 A No.

19 Q You talked about all these places you were going to go
20 where you claim you guys were going to commit jihad, and one
21 of them I think you talked about was Palestine, right?

22 A Yes.

23 Q And you said you were going there, like all the other
24 places you claimed, to get involved in jihad, righting?

25 A Yes.

Hadzovic - cross - Stern

579

1 Q Isn't the truth that you were really going there to
2 preach against other religions and not to fight at all?

3 A Preach against other religions?

4 Q Yes?

5 A Can you repeat the question.

6 Q Yes. The reason you planned to go to Palestine was to
7 preach hatred against all religions other than Islam, wasn't
8 that true?

9 A No, I don't understand that.

10 Q Well, do you remember talking to agents Lamendola and
11 Mazzei on August 28th at about 1:15?

12 A Yes.

13 Q The first day you ever talked to anybody in this case,
14 right?

15 A Yes.

16 Q And they asked you specifically about Palestine, didn't
17 they?

18 A Yes.

19 Q And didn't you say --

20 MR. ARIAIL: Your Honor, can we get a reference to
21 the document.

22 MR. STERN: 3500 SH 86.

23 Q Didn't you tell them we were there first to learn Arabic
24 then to go to the Palestine and preach hatred against all
25 religions other than Islam; did you say those words to those

Hadzovic - cross - Stern

580

1 two agents, yes or no?

2 A Something like that. I can't remember the exact words I
3 said.

4 Q Let me show you this document and see if it refreshes
5 your recollection. Look up when you're done.

6 A Okay.

7 Q Does that refresh your recollection as to what you said
8 to agents-- sorry, Detectives Lamendola and Mazzei?

9 A Not entirely, but, yes.

10 Q Something like that -- going to preach, right?

11 A Going to preach, yes.

12 Q One of the things you said, I think, was that you changed
13 from Palestine to Somalia because Somalia was closer.

14 Correct?

15 A Yes.

16 Q And that of course isn't true, is it?

17 A No, it is true.

18 Q That Somalia is closer to Cairo than Egypt -- than
19 Palestine?

20 A Than Afghanistan.

21 Q Didn't you say you decided not to go to Palestine because
22 Somalia was closer?

23 A I can't remember. I'm sorry.

24 Q You recall, I take it, August 28th, a couple of days, a
25 day after you were arrested, at 2:45 you had a meeting with

Hadzovic - cross - Stern

581

1 detectives, right?

2 A Yes.

3 Q And you recall that at that meeting they took notes of
4 what you said?

5 A Yes.

6 Q And after they took those notes they asked to you read
7 the notes and make sure they were accurate, right?

8 A Briefly I read the notes.

9 Q Not only did you read the notes but you signed them,
10 didn't you, you put your initials on them?

11 A They had told me to sign on every page.

12 Q And they put their initials on them?

13 A Correct.

14 Q That was an important time in your life, wasn't it?

15 A Yes.

16 Q Because you had already decided, I better do something to
17 get out of this trouble I got myself in, right?

18 A I decided that I better tell the truth cause my father
19 told me to do so.

20 Q You always did what your father told you?

21 A No, I didn't.

22 Q And when you read that you knew it was important, right?

23 A When I read that?

24 Q The notes that the detectives had taken.

25 A I read them briefly. I didn't read the whole thing.

Hadzovic - cross - Stern

582

1 Q I'm asking, did you know it was important, yes or no?

2 A Yes, it was important. Of course.

3 Q I mean, you didn't want anyone to think you were lying
4 about anything, did you?

5 A No, I wasn't lying so of course I wouldn't want anybody
6 to think I was lying.

7 Q Didn't you tell these detectives, While in Cairo we
8 originally discussed going to Palestine and changed to Somalia
9 because it was closer; did you say that to the agents -- the
10 detectives, yes or no?

11 A Sounds right, but "closer," I'm not sure about that exact
12 word.

13 Q Let me show you this document. It's 3500 SH 4. I want
14 to you look at the highlighted portion and look up when you're
15 done.

16 (Pause.)

17 A Yes.

18 Q Is this document initialed by you, right?

19 A That's correct.

20 Q And those words I read are precisely the words you said,
21 aren't they?

22 A It sounds almost exactly right, just the "closer," I
23 can't recall saying "closer."

24 Q It's of course not true that Somalia is closer than
25 Palestine, right?

Hadzovic - cross - Stern

583

1 A No. Palestine borders with Egypt.

2 Q One of the things you talked about was going to
3 Afghanistan or Iraq, right?

4 A Yes, we spoke about that.

5 Q Do you know what language they speak in Somalia?

6 A Somalian.

7 Q Do you know what language they speak in Afghanistan?

8 A Like Pashtun.

9 Q Do you know what language they speak in Iraq?

10 A Arabic.

11 Q And so Pashtun and Somalian, you don't speak either of
12 those languages do you?

13 A No, I don't.

14 Q And you weren't studying to learn those languages to help
15 you out with your plan for jihad, were you?

16 A In like Afghanistan it's diverse. The Taliban and Al
17 Qaeda are linked together and they are diverse. They speak
18 Arabic and Pashtun.

19 Q Good answer but not the question I asked you. I asked
20 you were you are studying those languages to help you with
21 your quest to do jihad?

22 A Pashtun and Somalia?

23 Q Yes.

24 A No.

25 Q Did you ever study those languages?

Hadzovic - cross - Stern

584

1 A No.

2 Q You also talked about going to Yemen, right?

3 A Betim spoke very much about Yemen, yes.

4 Q That's because it was cheaper to go to school there,
5 wasn't it?

6 A Yes.

7 Q Do you know what language they speak in Yemen?

8 A Arabic.

9 Q And so Betim was talking about going to place where he
10 could use the language he was learning, right?

11 A Correct.

12 Q And he wasn't going there to fight, was he?

13 A No.

14 Q You talked about trying to buy guns from people, correct?

15 A Yes.

16 Q One of those people was Mourad?

17 A Yes.

18 Q And you said -- and Ahmed was another, right?

19 A I think Ahmed was also another.

20 Q And there were others, too, you said?

21 A Yes.

22 Q You were looking for the black market?

23 A Correct.

24 Q And you say that those guns were being bought to protect
25 yourselves inside Egypt, right?

Hadzovic - cross - Stern

585

1 A Yes.

2 Q Now, Egypt, Cairo in particular, is a pretty volatile
3 place, isn't it?

4 A Volatile place?

5 Q Volatile.

6 A It's pretty peaceful, yes.

7 Q When you say you needed guns to protect yourself, what
8 exactly were you are afraid was going to happen to you?

9 A Just in case some time of upbringing happened in Egypt.

10 Q Did you ever a gun in the United States?

11 A No.

12 Q We have some crime here, right?

13 A Correct.

14 Q You weren't afraid here that there might be some kind of
15 uprising, were you?

16 A No.

17 Q But in peaceful Cairo you were concerned about that?

18 A Yeah, but at that time I thought the government was
19 corrupt.

20 Q Now you know the government is not corrupt?

21 A No, now I know the government is corrupt.

22 Q So did you always think the government is corrupt?

23 A The Egyptian government was corrupt, yes.

24 Q How about the U.S. government?

25 A I think there are some aspects that there's wrong, but

Hadzovic - cross - Stern

586

1 the majority is not.

2 Q These guns you were trying to buy in Cairo, they were
3 meant to stay in Cairo, right?

4 A Yes.

5 Q When you were in Cairo, you say you continued to listen
6 to nasheeds, right?

7 A Yes.

8 Q And what are nasheeds?

9 A Like the Islamic song.

10 Q Islamic song of what?

11 A Every sort. They vary.

12 Q And you continued to watch various videos, right?

13 A Yes.

14 Q And some of these nasheeds you listened to you couldn't
15 even understand, could you?

16 A Correct.

17 Q Even some of the ones in Albanian you couldn't
18 understand, right?

19 A Correct.

20 Q Nonetheless you listened to some of them, right?

21 A Yes.

22 Q And you talked some I think about Anwar Al-Awlaki, right?

23 A Yes.

24 Q Do you know, did he ever go to fight jihad?

25 A When I was there, no.

Hadzovic - cross - Stern

587

1 Q Do you know if died in battle yet?

2 A Not to any knowledge.

3 Q He's still living in Yemen, right?

4 A I don't know.

5 Q Writing his parents in New Mexico?

6 A I don't know.

7 Q He's okay as far as you know, isn't he?

8 A No, I don't know.

9 Q Don't you think you would have heard if Anwar Al-Awlaki
10 was killing?

11 A I mean, I don't know. Maybe I would. It depends who is
12 giving the media about it.

13 Q What do you mean by that?

14 A Maybe it's some time of inner thing, like civil thing
15 between like Anwar and somebody else and they kill him, hide
16 his body or something. Then who's going to report that, who's
17 going to know? Let's say now a U.S. troop killed Anwar
18 Al-Awlaki, then it's going to be known.

19 Q But if it's a private thing and someone just hides the
20 body in their basement, no one might know?

21 A Yeah, it's a possibility, of course.

22 Q Sure. You talked about Armend Kalanderi, right?

23 A Correct.

24 Q And what you knew for a fact about him was that he was
25 there studying religion?

Hadzovic - cross - Stern

588

1 A Yes.

2 Q You knew the university he was at, right?

3 A It was like Al-Amkey, something like that.

4 Q A real university, isn't it?

5 A I believe so, yeah.

6 Q Was he there with anyone or by himself?

7 A He was there with his wife.

8 Q And he helped you out, didn't he?

9 A Yes. He did.

10 Q He helped up find an apartment when you were in one that
11 was too expensive?

12 A Correct.

13 Q Offered to show you the ropes around Cairo, right?

14 A Yes.

15 Q And you say that he also talked with you about jihad?

16 A We spoke about jihad, yes.

17 Q Now, in the time that you have been interested in this
18 kind of thing, I take it you studied on the Internet, right?

19 A Studied on the Internet?

20 Q Yes.

21 A What type of study? I'm sorry, I don't know.

22 Q About jihad, for example.

23 A Yes, we used to watch videos and things of that sort,
24 yes.

25 Q Egypt is an important Arabic country, right?

Hadzovic - cross - Stern

589

1 A I don't really know. I mean, if it's important or not, I
2 don't know.

3 Q Did you ever read anything about Egypt?

4 A You have stories about Moses and the Pharaoh.

5 Q More recent.

6 A Recently, like there was a revolution in Egypt.

7 Q A little further back. Did you ever read for example
8 about the Islamic group in Egypt?

9 A Islamic group in Egypt?

10 Q Did you ever hear of that?

11 A No.

12 Q Did you ever hear of the Muslim Brotherhood?

13 A I've heard of the Muslim Brotherhood, yes.

14 Q Amend Kalanderi was at one time associated with the
15 Muslim Brotherhood?

16 A I don't know.

17 Q While were with Kalanderi, did he take you to meetings of
18 radical groups in Egypt?

19 A No.

20 Q Never, right?

21 A No.

22 Q Never invited you?

23 A No.

24 Q And you never went?

25 A No.

Hadzovic - cross - Stern

590

1 Q So we just have your word that he talked to you about
2 these other things, right?

3 A Talked to me about what?

4 Q About jihad.

5 A We spoke to him about jihad and we went to him to ask
6 about if he can help us in going to fight jihad.

7 Q But you have no letter from him to that effect, do you?

8 A No, I don't.

9 Q No e-mails?

10 A No.

11 Q No notes?

12 A No.

13 Q No nothing.

14 A I have my eyes and what I seen and what I heard.

15 Q And your word?

16 A Of course.

17 Q I want to talk about the time you decided that you wanted
18 to leave Cairo. You made that decision because you decided
19 that what you were doing or planning to do was wrong, right?

20 A Leaving from Cairo?

21 Q No, the things that you planning to do there, you say.

22 A Yes, that's where I went.

23 Q But it's also true, isn't it, that you were very lonely?

24 A Lonely?

25 Q Yes, lonely.

Hadzovic - cross - Stern

591

1 A No, by that time I was -- I got over it like the first
2 week in Cairo. I became to have friends there, but of course
3 you're always going to miss family regardless of where you
4 are.

5 Q And you missed home?

6 A Of course.

7 Q Missed the kind of food you eat at home?

8 A Yes.

9 Q Things you watch on TV?

10 A Yeah.

11 Q X-Box?

12 A Yes.

13 Q You like to play X-Box, don't you?

14 A Yes.

15 Q Did you have X-Box in your apartment there?

16 A In Cairo?

17 Q Yes.

18 A No.

19 Q So you made this decision, you wanted to come home, and
20 you say that at first to avoid unpleasantness you lied to
21 Betim about it, right?

22 A Correct.

23 Q Now, you weren't afraid for your life when you did that,
24 were you?

25 A No.

Hadzovic - cross - Stern

592

1 Q You just didn't want to have unpleasantness?

2 A Correct.

3 Q And you knew that lying to your friends, like to your
4 family, is haram?

5 A Correct.

6 Q What does haram mean again?

7 A Like forbidden, like a sin if you do it.

8 Q It was just the path of least resistance to lie to him,
9 correct?

10 A That's correct.

11 Q Instead of trying to debate about it or discuss it, you
12 thought, Aha, I will just lie about it, correct?

13 A Correct.

14 Q And not only did you lie to him, but you set things up so
15 that he couldn't catch you by buying this return ticket to
16 Cairo, didn't you?

17 A Correct.

18 Q How much did that ticket cost?

19 A I'm not sure.

20 Q It wasn't your money anyway, was it?

21 A No, it wasn't.

22 Q It was your dad's money?

23 A Correct.

24 Q And that was something you did outside of the lie you
25 were telling Betim so that you could support the lie, right?

Hadzovic - cross - Stern

593

1 A Can you rephrase that.

2 Q Sure. You lied to Betim, and in case he asked you if you
3 were lying, you had the ticket to show him, No, look, I'm
4 really coming back; right?

5 A Correct.

6 Q But you weren't planning to come back?

7 A No.

8 Q You had decided to leave?

9 A Yes.

10 Q So it was a pretty sophisticated lie you were telling
11 him, right?

12 A Yes.

13 Q And how about marriage, is that something that is
14 important in Islam?

15 A Yes.

16 Q Something sacred?

17 A Of course.

18 Q And you lied with that too, right?

19 A I really did want to get married, but --

20 Q Did you have a wife waiting for you in Plav?

21 A No.

22 Q Did you ever a hall rented?

23 A No.

24 Q Because you weren't getting married there, were you?

25 A No, I wasn't.

Hadzovic - cross - Stern

594

1 Q Not unless Allah willed it and put someone in your path,
2 you didn't know who to marry; you had nothing planned, right?

3 A Correct.

4 Q So that was a lie?

5 A Yes.

6 Q And then somehow, you don't really know how, Betim found
7 out, right?

8 A Yes.

9 Q And Betim came to you and he said, Don't leave.

10 A He came to me and said, Why are you going back to the
11 Kuffar land? What about our plans to go and fight?

12 Q Did he say those words, What about our plans to go and
13 fight?

14 A Yeah, pretty much.

15 Q Was anybody present when he said that?

16 A Just me and Betim.

17 Q Were there any detectives around taking notes when he
18 said that?

19 A No.

20 Q Court reporter; anything like that?

21 A No.

22 Q Was Mourad around?

23 A No. I don't think so, no.

24 Q Was Ahmed around?

25 A No.

Hadzovic - cross - Stern

595

1 Q Was Armend around?

2 A No.

3 Q Just you and him and that's what you say he said, right?

4 A Yes.

5 Q And then you had a bad fight, right?

6 A Yes.

7 Q And the next day was the time for you to leave, wasn't
8 it?

9 A I don't know if it was the day of or the day before, but
10 yes.

11 Q And so, I guess, because you were so mad at each other
12 Betim said, Get away from me. You're violating our agreement.
13 Your own your now; right?

14 A No. He basically we got Koran. We went to airport
15 together and we said our goodbyes.

16 Q He came, right?

17 A Yes.

18 Q And Mourad came, right?

19 A Yes.

20 Q They waited for to you leave?

21 A Yes.

22 Q And they acted friendly with you, didn't they?

23 A Of course.

24 Q He didn't seem mad at you, did he?

25 A No.

Hadzovic - cross - Stern

596

1 Q Now, how long before you actually left did you decide
2 that what you were doing in Cairo was wrong?

3 A Something like a month, about.

4 Q And you knew where the embassy was, right?

5 A Yes.

6 Q So during that month did you go to the United States
7 embassy -- that is your country, right?

8 A Yes.

9 Q And did you say, I'm here with a terrorist who wants to
10 attack U.S. soldiers. What we're doing is wrong. Did you say
11 that?

12 A No, I didn't.

13 Q Did you contact anyone in Cairo and tell them that?

14 A No.

15 Q And you had nothing to gain by doing that, did you?

16 A I had nothing to gain?

17 Q Right.

18 A No.

19 Q So would somebody give you a better deal on sentence if
20 you did that?

21 A I don't know.

22 Q Do you think someone might have?

23 A I don't know.

24 Q But after that you get on the plane and you leave for
25 Pristina, which is the airport closest to Plav, right?

Hadzovic - cross - Stern

597

1 A No, it's just cheaper.

2 Q So that is where you flew into?

3 A Correct.

4 Q Did your dad, know by the way, that you had wasted his
5 money on the fake trip back to Cairo?

6 A Yes.

7 Q That was okay with him?

8 A Yes.

9 Q Now, where does your grandfather work?

10 A My grandfather?

11 Q Yes.

12 A My father's died and my mother's dad, he's retired.

13 Q What did he do?

14 A At the used to be a mechanic for NATO.

15 Q Where?

16 A In Digada.

17 Q That is in Kosovo, right?

18 A Correct.

19 Q Do you know the name of the base he worked on?

20 A No.

21 Q Did you ever see that base?

22 A Yes.

23 Q How did that happen?

24 A We went to pick up his wife in a city called Ferizaj and
25 he told us where he used to work.

Hadzovic - cross - Stern

598

1 Q Did you know if that base was American?

2 A It's a NATO base.

3 Q And NATO soldiers you say come from every country in the
4 world, right?

5 A Correct.

6 Q And they are there to help defend Kosovo, fair to say?

7 A Yes.

8 Q You have nothing against Kosovo, do you?

9 A No.

10 Q And you have nothing against Montenegro?

11 A No.

12 Q And you say that Betim said to you maybe we can do this
13 thing in the Balkans, right?

14 A Right.

15 Q And you actually have family who live in the Balkans,
16 don't you?

17 A Yes.

18 Q So did you go to this NATO base and say, Hey, I have
19 something to tell you, I know someone who might want to attack
20 you; did you do that?

21 A No, I didn't.

22 Q Did you even try to do that?

23 A No.

24 Q It's not like they stopped you at the gate, was it?

25 A No.

Hadzovic - cross - Stern

599

1 Q You just went about your business, correct?

2 A Correct.

3 Q And you were there in Plav for about two months weren't
4 you?

5 A Yes.

6 Q Hanging out with your family, right?

7 A Correct.

8 Q Having a good time, fair to say?

9 A Yes.

10 Q I mean, you liked being with your family, didn't you?

11 A Of course.

12 Q And while you were in Plav did you have access to a
13 telephone?

14 A Yes.

15 Q And did you have access to the Internet?

16 A Yes.

17 Q There are Internet cafes, right?

18 A I've never been to an Internet cafe while there.

19 Q Your family had it in their home?

20 A Yes.

21 Q Did you telephone anyone and tell them -- in the United
22 States -- Hey, I want to tell you something. We've got a
23 problem here 'cause I know someone who wants to attack U.S.
24 forces; did you do that when you were in Plav?

25 A No, I didn't.

Hadzovic - cross - Stern

600

1 Q Did you e-mail anybody?

2 A No.

3 Q Did you tell your family members who lived there in the
4 Balkans?

5 A No, I didn't.

6 Q There came a time then when you decided to go home after
7 the two months, right?

8 A Yes.

9 MR. STERN: Judge, if we can work a little longer,
10 I'll be done with this by 1:15, if that's okay with everyone.

11 THE COURT: Is that okay with you, ladies and
12 gentlemen.

13 JURORS: Yes.

14 THE COURT: Okay with everyone who counts. I don't
15 mean to disparage the importance of anyone.

16 Go ahead.

17 Q When you came back into the U.S. how were you dressed?

18 A I had a shirt, a button-up shirt, and khakis.

19 Q Were you stopped at the airport?

20 A When I was going to Germany from Podgorica, the capital
21 of Montenegro, something happened with the flight, they got
22 messed up and from Germany we went through Washington.

23 In Germany, they did stop me and check my bag. Like
24 they took me inside like a small room and checked my bag and
25 then I went on the plane from Germany to Washington and then

Hadzovic - cross - Stern

601

1 from Washington I was stopped by U.S. Custom agent and then
2 from there went to New York.

3 Q What did you think that was about when you were stopped
4 in Washington?

5 A I thought it was just because I'm Musim and I just came
6 back from overseas.

7 Q So after that you went home, right?

8 A Yes, I did.

9 Q Were you glad to be back in the United States?

10 A Of course.

11 Q And there came a time the day after you got home that you
12 went to see an uncle of yours, correct?

13 A Yes.

14 Q And did anything unusual happen on your way to see your
15 uncle?

16 A After I left my uncle's house, I was driving and my
17 brother said there's a cop following us. And we were driving
18 and like I realized that there were cops. I didn't know as to
19 why they were following us.

20 Q Did you think they were following you or your brother?

21 A My brother thought they were following him.

22 Q I'm asking you what you thought.

23 A I thought they were following him as well because
24 something -- at that time they were like cracking down on like
25 people with like sports cars.

Hadzovic - cross - Stern

602

1 Q After they started following him, you went home to your
2 parents' house, right?

3 A Yes.

4 Q And you didn't really leave the house again after that
5 for a while, did you?

6 A I went to the store, bought games, played games, went to
7 eat and stuff. I didn't go to many places, no.

8 Q Mostly you stayed at your dad's house and played video
9 games?

10 A Yes.

11 Q You were there for about 20 days, weren't you?

12 A About, yes.

13 Q Then one day someone came and knocked on the door, didn't
14 they?

15 A Yes.

16 Q Who was that?

17 A Federal agents.

18 Q What did they say to you?

19 A They first -- I was sleeping and my dad came and like,
20 Sulo -- that's what they call me -- wake up. I woke up and he
21 was like there's police here to speak with you.

22 So I went to the door and they said, Can you come
23 speak with us? And I said okay, and I went with them and my
24 dad said, in Serbo-Cro, he said, Listen, tell them everything
25 you know, you don't have -- tell them everything you know.

Hadzovic - cross - Stern

603

1 Q Did your dad know what you say you knew?

2 A No.

3 Q And did they tell you why they were taking you down to
4 talk to you?

5 A No.

6 Q Where did they take you to?

7 A The District Attorney's office right here.

8 Q What day was this -- were you done?

9 A Yes.

10 Q What day was this?

11 A This was August 28, or 29, I'm not -- like that period.

12 Q When you got down to their offices, did they tell you why
13 they wanted to talk to you?

14 A No.

15 Q Did they say, Tell us anything you know about anything?

16 A They started asking me questions and I gave them the
17 truth.

18 Q From those questions you knew they had some ideas about
19 you, didn't they?

20 A No, actually I didn't. I had no idea. I honestly
21 thought it was because I came back and, you know, I'm from
22 overseas and I had a beard and short pants and they were
23 looking at me in that way.

24 Q Did they ask you why you have short pants?

25 A At the beginning, no.

Hadzovic - cross - Stern

604

1 Q Ask you why you have a beard?

2 A No.

3 Q They asked you what you were doing overseas?

4 A Correct.

5 Q They started asking you specific questions about what you
6 were over there, didn't they?

7 A Correct.

8 Q You knew that you were in trouble, right?

9 A Yes.

10 Q Now, you had never been, I take it, questioned by federal
11 authorities before, had you?

12 A No.

13 Q And when you talked to them you gave them lots and lots
14 of information, didn't you?

15 A Yes, I did.

16 Q And a lot of the information you gave them was about
17 people you will knew in Egypt, wasn't it?

18 A A lot of information about me and Betim.

19 Q You gave them information about Mourad, didn't you?

20 A Yes.

21 Q About Ahmed?

22 A Yes.

23 Q About Armend?

24 A Correct.

25 Q About lots of people you knew from Egypt, right?

Hadzovic - cross - Stern

605

1 A Correct.

2 Q And it wasn't just that you gave them stories about them,
3 you told them, for example, Mourad's e-mail address, didn't
4 you?

5 A Yes.

6 Q And you told them that Mourad lived in Dusseldorf with
7 his wife, right?

8 A That he was going to get married in Dusseldorf, yes.

9 Q And you told them Ahmed's e-mail address, didn't you?

10 A Yes.

11 Q And you told them Armend's e-mail address, didn't you?

12 A Correct.

13 Q So they had a lot of specific information from you about
14 how they could contact people, right?

15 A Contact people?

16 Q Yes.

17 A You mean they had the e-mail address, yes.

18 Q You knew those were good because Ahmed e-mailed since you
19 got back, hadn't he?

20 A Yes, he did.

21 Q You had no safety concerns, did you?

22 A Concerning what?

23 Q Concerning anything.

24 A No.

25 Q And at least as late as December 22nd no one knew you had

Hadzovic - cross - Stern

606

1 pleaded guilty, right?

2 A My family did.

3 Q Other than your family.

4 A No, I don't think so, no.

5 Q And you didn't expect your family to betray you?

6 A Betray me on what?

7 Q By telling people you had pleaded guilty?

8 A No.

9 Q Because the U.S. attorneys told you keep a secret, right?

10 A The cooperation agreement, yes.

11 Q Yes. So during that time between the date you got
12 arrested, which was August 28th and, let's say, December 22nd,
13 when no one knew you had pleaded guilty, did you ever e-mail
14 these people and say, Hey, do you know where I can get guns?
15 Did you ever do that?

16 A E-mail who?

17 Q Ahmed, Mourad, or Armend; did you e-mail any of them?

18 A No.

19 Q Did you ever ask them, Where could I go do jihad? I
20 worked things out with my parents now?

21 A If I was asked to do this by the prosecutors, then, yes,
22 I did.

23 Q Were you ever asked to do it?

24 A Yes.

25 Q And who did you e-mail?

Hadzovic - cross - Stern

607

1 A Ahmed.

2 Q Did he e-mail you back anything about guns?

3 A I don't know.

4 Q Did you ever see the e-mail he sent back?

5 A Sometimes. I don't recall them.

6 Q Was there anything about guns in them?

7 A I can't remember.

8 Q About jihad?

9 A Possibly. But I can't tell you 100 percent.

10 Q And did you ever hear back from Armend?

11 A Armend?

12 Q Yes.

13 A No.

14 Q How about Mourad?

15 A When I came back to the States?

16 Q Yes.

17 A I don't think so, no.

18 Q Now, after you got back to the U.S., you did have e-mail
19 contact with Betim, right?

20 A I just spoke with him that one time in September -- no,
21 August, when I first arrived.

22 Q You spoke with Betim three times once he had gotten to
23 Prizren?

24 A Yes.

25 (Continued next page)

Hadzovic - cross - Stern

608

1 EXAMINATION CONTINUES

2 BY MR. STERN:

3 Q In those email conversations, he talked to you about
4 staying in Prizren with Mustafa, right?

5 A I believe it was either Mustafa or Blerim. I can't
6 remember.

7 Q Did he ask you how your family was in another email?

8 A I can't remember.

9 Q Let me show you this document. It's 3500 SH-86. Read
10 the part in yellow and look up when you are done, please, and
11 tell me if that refreshes your recollection.

12 (Pause.)

13 A Yes.

14 Q Did he ask you how your family was?

15 A I believe so, yes.

16 Q In another he told what your problems he was having with
17 his cousin in Debar, right?

18 A Yes.

19 That was when I arrived back to the US.

20 Q Where is Debar?

21 A Debar, it's in Macedonia.

22 Q He was going to go there to see if he could help her,
23 right?

24 A The exact conversation was he spoke, that's something
25 that happened with his cousin in Debar and that he wanted to

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Hadzovic - cross - Stern

609

1 go over there and help her and also preach Islam if the other
2 thing doesn't happen.

3 Q You began to cooperate almost as soon as you were
4 arrested, didn't you?

5 A Correct.

6 Q And you've had a lawyer who talked to you about what
7 might happen to you if you didn't cooperate, right?

8 A Correct.

9 Q And you were told by this lawyer that if you went to
10 trial and got convicted, you would face life in prison, right?

11 MR. ARIAIL: Objection.

12 THE COURT: Well, try to steer clear of privileged
13 communications, obviously. But you are referring to the
14 charges he was facing and the maximum possible imprisonment?

15 MR. STERN: Correct.

16 THE COURT: All right.

17 Overruled but be careful.

18 MR. STERN: I will.

19 Q Is that what you were told?

20 A That I could possibly face up to that time, yes.

21 Q Life in prison?

22 A Correct.

23 Q That was a frightening thing to hear, wasn't it?

24 A Yes, of course.

25 Q You were also told that you could be held in jail, right.

Hadzovic - cross - Stern

610

1 A I can't remember that.

2 Q Do you know that people charged with crimes for which
3 they can get life in prison are often held in jail?

4 A Yes, they usually are.

5 Q So you thought you might be held in jail if you don't
6 cooperate, didn't you?

7 A Yes.

8 Q And how long after they first came to talk to you did you
9 plead guilty?

10 A After they first came to talk the me? I think it was
11 about maybe a little less than a month.

12 Q You immediately got certain benefits from that, didn't
13 you?

14 A From pleading guilty?

15 Q Yes.

16 A Yes, I did.

17 Q You were no longer facing life in prison, were you?

18 A Correct.

19 Q No matter what happened, the most you could get was
20 15 years, wasn't it?

21 A Correct.

22 Q And you didn't go to jail, did you?

23 A No, I didn't.

24 Q They left you out on the street, right?

25 A They gave me house arrest.

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Hadzovic - cross - Stern

611

1 Q Well, the government tried to get you out with no
2 conditions, didn't they?

3 A No. They gave me -- we got house arrest.

4 Q I am talking about the prosecutors.

5 A I think they agreed on house arrest as well. I can't
6 really remember.

7 Q Give me one second. Okay?

8 A Okay.

9 (Pause.)

10 Q Isn't it true that the government said we do not seek
11 detention in this case? Right?

12 A That I -- once again, I can't really recall these
13 conversations.

14 Q Take a look at this document. Read from line 14 to line
15 17 and look up when you are done.

16 (Pause.)

17 THE COURT: Come on up, please.

18 MR. STERN: Pardon?

19 THE COURT: Come on up, briefly.

20 (Continued on next page.)

21

22

23

24

25

Hadzovic - cross - Stern

612

1 (Side bar.)

2 THE COURT: I just want to be sure I understand the
3 fact, did the government oppose home detention?

4 MR. STERN: The government we said we don't think
5 detention is required here. You say let's get a PSR, a
6 pretrial report. Then he comes back and then you set
7 conditions, which include home detention.

8 THE COURT: It's a risk of some confusion here.

9 MR. ARIAIL: Yes.

10 THE COURT: The way you set this up made it sound
11 like the government affirmatively objected to home detention.

12 MR. STERN: No.

13 MR. ARIAIL: Specifically said in the transcript,
14 page 26, the government would seek home detention.

15 MR. STERN: That was after --

16 THE COURT: Excuse me.

17 MR. ARIAIL: The government would seek home
18 detention.

19 THE COURT: You can go ahead and do it. They will
20 clear it up on redirect.

21 (Continued on next page.)

22

23

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Hadzovic - cross - Stern

613

1 (In open court.)

2 EXAMINATION CONTINUES

3 BY MR. STERN:

4 Q So the -- sorry, ready?

5 A Yes.

6 Q So the prosecutor didn't ask that you be detained, did
7 they?

8 A It says --

9 Q No. Don't read it.

10 A I'm sorry?

11 Q I am just asking you, if you recall, whether the
12 prosecutor asked for you to be detained or not?

13 A Detained like in prison?

14 Q Yes, in jail.

15 A No.

16 Q Then the judge asked that they get some kind of report on
17 you, right?

18 A Correct.

19 Q Then when you came back after a little while, then the
20 government said all right. We are asking for home detention.
21 Right?

22 A No. It was the same day as I was -- I pled guilty, that
23 I got home detention.

24 Q No. I know it's the same day. I'm saying there was a
25 break. Then you came back after you talked to someone.

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CRR

CSR

Hadzovic - cross - Stern

614

1 No, you don't remember that?

2 A No.

3 Q All right. Now, you have talked about this 5K letter.
4 Tell me what you think a 5K letter is.

5 A It's a letter written by the government to Judge John
6 Gleeson and it states all the wrong I've done and all the
7 right I've done.

8 Q It is a letter which you hope will get you a much shorter
9 sentence, right?

10 A Of course.

11 Q Your hope is that you will never go to jail for a day,
12 isn't it?

13 A Of course, I would hope that.

14 Q Now, that letter, that 5K letter, the only people who can
15 write that letter are the prosecutors, correct?

16 A I believe so.

17 Q Whether I think you did a good job or not is irrelevant,
18 isn't it?

19 A I don't know.

20 Q Do you think that I could write a 5K letter for you?

21 A You personally? No.

22 Q Do you think anyone other than the prosecutors can?

23 A Other than the prosecutors? I really don't understand
24 like the whole law in 5K letter system.

25 Q I'm sorry. I'm sorry. I didn't hear you. Say again.

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OCR

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CRR

CSR

Hadzovic - cross - Stern

615

1 A I said like the whole cooperation agreement and 5K
2 letters and stuff, I am not really intelligent on those type
3 of matters.

4 Q Well, this was extremely important to you, wasn't it?

5 A Yes.

6 Q You were pleading guilty to something which could subject
7 you to prison for up to 15 years, right?

8 A Correct.

9 Q You had already avoided getting life in prison, hadn't
10 you; right?

11 A Right.

12 Q So now you were trying to get even less than that
13 15 years, weren't you?

14 A That's the charge. That's totally up to Judge John
15 Gleeson.

16 Q That's what you were trying to do. But you are right.
17 It is up to Judge Gleeson.

18 That's what you were trying to do, wasn't it?

19 A Get less?

20 Q Get less than 15 years?

21 A I hope to get less. But --

22 Q You hoped by working with the government you would get
23 less, didn't you?

24 A Yes; but there is no guarantee.

25 Q You had read this, hadn't you, and signed it?

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Hadzovic - cross - Stern

616

1 A Yes.

2 Q Because it was important?

3 A Correct.

4 Q Your whole future might revolve around what happens with
5 this report, correct?

6 A Yes.

7 Q So when you read it you made sure you could understand
8 it, didn't you?

9 A Correct.

10 Q You had a lawyer helping you understand it, right?

11 A Correct.

12 Q Isn't it true that what this says, Government
13 Exhibit 3500 SH-2, is the following. Maybe -- I am going to
14 give you a copy so -- is it okay, judge?

15 THE COURT: You can put it right on the screen.
16 Remember the screen we have here.

17 MR. STERN: Yes. I am not in the 21st century yet
18 but I am moving that way.

19 THE COURT: It's in evidence. Is this the
20 agreement?

21 MR. STERN: Yes. I just want him to be able to read
22 along with me.

23 THE COURT: Do you want the jury to see it too?

24 MR. STERN: Yes, everybody.

25 THE COURT: It's in evidence.

Hadzovic - cross - Stern

617

1 Q Doesn't that agreement say, and I am reading now from the
2 third line down, where they are talking about cooperation:

3 In this connection, it's understood that a good
4 faith determination by the office --

5 THE COURT: Slow down.

6 MR. STERN: Sorry.

7 Q Which refers to the United States Attorney's Office, as
8 to whether the defendant has cooperated fully --

9 THE COURT: Slow down.

10 Q -- and provided substantial assistance and has otherwise
11 complied with the terms of this agreement and the Office's
12 good faith assessment of the value, truthfulness, completeness
13 and accuracy of the cooperation shall be binding upon him.

14 Meaning you, right?

15 A Yes.

16 Q It doesn't say anything about defense lawyers, does it?

17 A No.

18 Q It doesn't say anything about judges?

19 A No.

20 Q It's solely for the US Attorney's Office to decide
21 whether you get that 5K letter that might be your ticket to
22 get out of jail, isn't it?

23 A Once again, that's up to Judge John Gleeson, what he
24 gives me for sentencing.

25 Q I am asking you a different question, sir.

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Hadzovic - cross - Stern

618

1 A Can you repeat the question?

2 Q You need a 5K letter to get yourself a low sentence,
3 don't you?

4 A After I have to complete the cooperation agreement,
5 correct.

6 Q Without that 5K letter, you are not nearly as likely to
7 get a low sentence, are you?

8 A If I don't comply with my obligations on cooperation
9 agreement, I won't get it.

10 Q I want you to try and listen to me carefully.

11 If you don't get that letter, you are not nearly as
12 likely to get a short sentence, are you?

13 A I don't think so.

14 Q You need that letter, right?

15 A Yes.

16 Q And the only people who can give you that letter is the
17 government, right?

18 A Correct.

19 Q Okay. Now, if they are not satisfied with what you do
20 for them, do you think you'll get that letter?

21 A If they are not satisfied, no, I won't get the letter.

22 Q So you have to be sure you satisfy them, don't you?

23 A I have to be sure to do what I am obligated to do upon
24 this agreement.

25 Q Let me ask you a question. If you lie and they don't

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Hadzovic - cross - Stern

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1 know it, they thought it was the truth, would you still get
2 the letter or not?

3 A I don't know.

4 MR. ARIAIL: Objection.

5 THE COURT: No. He can ask the witness'
6 understanding.

7 Go ahead.

8 A If I lie and they don't know about it?

9 Q If you are lying and you done get caught, they think
10 you've told the truth, you'll still get the letter, won't you?

11 A I guess so.

12 Q Okay. You have been at home for about two years now,
13 haven't you?

14 A Correct.

15 Q Have you been going to college?

16 A Yes, I have.

17 Q Watching TV?

18 A Yes.

19 Q Eating your mom's food?

20 A Yes.

21 Q Playing Xbox?

22 A Sometimes, yes.

23 Q Wearing whatever clothes you want?

24 A Correct.

25 Q Living a pretty a regular life, right?

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Hadzovic - cross - Stern

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1 A If you call home detention regular life then yes.

2 Q You want that to continue, don't you?

3 A Home detention?

4 Q No. Your regular life.

5 A I want my real life to continue.

6 Q And your real hope is that by testifying here, you'll get
7 no time at all and what you call your real life will begin,
8 right?

9 A What I hope by telling the truth here today, that's --
10 that people understand, I'll get that letter.

11 Q They told to you keep saying tell the truth, tell the
12 truth, tell the truth; didn't they?

13 A No, they didn't.

14 Q I'm asking you a simple question. Do you hope that
15 through your testimony here in this courtroom you are going to
16 end up getting no time in jail and continue with what you call
17 your real life?

18 Isn't that what you hope?

19 A Of course I hope that. By doing what's obligated upon me
20 on this agreement, that I would get that.

21 Q That's because you always do what you are obligated to
22 do, right?

23 A Correct.

24 Q Treat your parents well and not lie to them, right?

25 THE COURT: I think we have covered that, Mr. Stern.

1 MR. STERN: I have nothing else.

2 THE COURT: Thank you, Mr. Stern.

3 Let's break for lunch. We will resume at 2:15.

4 Don't discuss the case.

5 (The following occurred in the absence of the jury.)

6 THE COURT: Okay. See you at 2:15.

7 (Luncheon recess taken.)

8 (Continued on next page.)

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1 A F T E R N O O N S E S S I O N

2 (The following occurred in the absence of the jury.)

3 MR. DuCHARME: Judge, there will be a --

4 (Defendant present.)

5 THE COURT: Yes?

6 MR. DuCHARME: Your Honor, there will be a couple of
7 issues to address with the Court before our expert witness
8 testifies. He will be the -- we've got two other witnesses
9 before him and I'll frankly need a break to set up a laptop.
10 We can address those issues now or at the break later,
11 whatever is your preference.

12 THE COURT: Let's do it at the break. Let's finish
13 this witness.

14 Is there a redirect?

15 MR. ARIAIL: A brief one, Your Honor.

16 THE COURT: Okay. Let's bring them out.

17 Seat the jury, please.

18 There is a fire drill at 3:00. We are ignoring it.

19 (Witness present.)

20 Just tough it out. There will be some noise. It is
21 a drill. If it is actually a fire at 3:00 o'clock, we'll
22 evacuate.

23 MR. STERN: I'm not sure how we will know the
24 difference.

25

Hadzovic - redirect - Ariail

623

1 (Jury present.)

2 THE COURT: Okay. Please be seated.

3 Welcome back.

4 We are ready to resume.

5 You have a brief redirect?

6 MR. ARIAIL: Yes, Your Honor.

7 THE COURT: Go ahead.

8 REDIRECT EXAMINATION

9 BY MR. ARIAIL:

10 Q Mr. Hadzovic, do you know who the other witnesses are in
11 this case?

12 A No, I don't.

13 Q Do you know what the other evidence is in this case other
14 than what you say here today?

15 A No, I don't.

16 Q Did the government tell you whether or not they had audio
17 recordings or video recordings of Mr. Kaziu?

18 MR. STERN: Objection.

19 THE COURT: Overruled.

20 A No, they didn't.

21 Q The videos that you looked at earlier, did the government
22 tell you where those came from?

23 A No, they didn't.

24 Q Other than the emails that you testified about earlier,
25 the ones that you said were printed on your consent, did the

Hadzovic - redirect - Ariail

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1 government tell you whether they had other emails of
2 Mr. Kaziu?

3 A No, they didn't.

4 Q Did they tell you about emails related to Ahmed or
5 Armend?

6 A No.

7 Q Or Adem?

8 A No.

9 Q Did they tell you whether they found anything on
10 Mr. Kaziu when he was arrested?

11 A No, they didn't.

12 Q When you walked in here yesterday, did you know whether
13 Ahmed the Somali was going to be sitting at that trial table
14 with Mr. Kaziu?

15 A No, I didn't.

16 Q Did you know whether Armend Kalanderi was going to be
17 sitting there?

18 A No.

19 Q Do you know if Armend Kalanderi is a witness in this
20 case?

21 A No, I don't.

22 Q Do you know if Ahmed the Somali is a witness in this
23 case?

24 A No, I don't.

25 Q Fadil, how about Fadil?

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Hadzovic - redirect - Ariail

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1 A No.

2 Q Mourad?

3 THE COURT: Can we cover this with a blank question?

4 Do you know any of the other witnesses in the case?

5 THE WITNESS: No, I don't.

6 Q Now, Mr. Stern asked you some questions about some of the
7 statements you made to law enforcement the day --

8 MR. STERN: Objection as to the characterization.

9 THE COURT: Rephrase it, please.

10 Q Mr. Hadzovic, did you make some statements to law
11 enforcement on August 28th and August 29th of 2009?

12 A Yes, I did.

13 Q And during those statements, did you tell law enforcement
14 what it was that you and Mr. Kaziu were going to do overseas?

15 MR. STERN: Objection.

16 THE COURT: Overruled.

17 A Yes, I did.

18 Q What is it that you told them?

19 MR. STERN: Objection.

20 THE COURT: Come on up.

21 (Continued on next page.)

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Hadzovic - redirect - Ariail

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1 (Side bar.)

2 MR. STERN: The government is seeking to get in
3 prior inconsistent statements. There is no claim of recent
4 fabrication. He had a motive to lie already when he made
5 those statements. They shouldn't come in. They are just
6 hearsay.

7 MR. ARIAIL: Your Honor, I won't inquire if the
8 defense can concede we can admit 86 --

9 MR. STERN: I will not.

10 MR. ARIAIL: -- and four, which are documents which
11 the defense used to cross-examine and to confront the witness.
12 Under 612 those are admissible in terms of the context, what
13 he said. They accused him of lying on the day that he came
14 in. If the jury is to see what he said on the day that he
15 came in, they can take a look at the documents or he can
16 testify to it.

17 MR. STERN: No. Those are prior consistent
18 statements. We used it to refresh his recollection or
19 impeachment. They were bound by his answers. They weren't
20 sworn to. That doesn't make the whole document admissible.

21 THE COURT: If you want to do this on a targeted
22 basis, because I have forgotten precisely what Mr. Stern --
23 what statements and particular subject matters Mr. Stern
24 inquired of the witness about on those first day or two of
25 interviews, you may.

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Hadzovic - redirect - Ariail

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1 But he's right. You can't bring in everything he
2 said. It is hearsay, basically, and there is no claim of
3 recent fabrication here.

4 But if you wanted to clarify, there is a
5 suggestion -- it doesn't sound like that's what you have in
6 mind.

7 MR. ARIAIL: No.

8 THE COURT: Forget it.

9 Objection sustained.

10 (Continued on next page.)
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Hadzovic - redirect - Ariail

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1 (In open court.)

2 EXAMINATION CONTINUES

3 BY MR. ARIAIL:

4 Q Mr. Hadzovic, what are your obligations under the
5 cooperation agreement with the government?

6 A My obligations are that I always have to tell the truth,
7 that I have to consent to any material I may have to give to
8 the prosecutors if asked, that I -- if asked to do so, take
9 part in undercover activity, to not share my cooperation
10 agreement with a third-party, and to testify if asked to do
11 so.

12 Q What happens if you lie here today?

13 A Then I breach my cooperation agreement, I don't receive
14 my 5K letter, I cannot take back my guilty verdict of
15 conspiracy to provide material support to terrorists and
16 additionally I can be charged with other crimes.

17 MR. ARIAIL: Nothing further, Your Honor.

18 THE COURT: Anything?

19 MR. STERN: No recross.

20 THE COURT: You are excused.

21 Thank you.

22 Have a good day.

23 THE WITNESS: You too.

24 (Witness leaves courtroom.)

25 THE COURT: Call your next witness, please.

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Hadzovic - redirect - Ariail

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1 MR. KAZEMI: The government calls FBI Special Agent
2 Scott Holmes, Your Honor.

3 THE COURT: Good afternoon.

4 Come on up, please. Stand next to that chair and
5 Alicyn will swear you in.

6 (The witness is duly sworn/affirmed by the clerk.)

7 THE CLERK: Please have a seat.

8 State your name and spell it for the record, please.

9 THE WITNESS: Scott Holmes, S C O T T, H O L M E S.

10 MR. KAZEMI: May I inquire, Your Honor?

11 THE COURT: Yes.

12 MR. KAZEMI: Thank you.

13 DIRECT EXAMINATION

14 BY MR. KAZEMI:

15 Q Good afternoon, Agent Holmes.

16 Where do you work?

17 A The FBI New York office.

18 Q What's your title?

19 A Special Agent.

20 Q How long have you been a Special Agent with the FBI?

21 A Approximately two years eight months.

22 Q Where are you currently assigned?

23 A The JTTF, the Joint Terrorism Task Force.

24 Q What's the JTTF?

25 A It's a partnership between various US law enforcement

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Hadzovic - redirect - Ariail

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1 agencies charged with conducting investigations into terrorist
2 activity.

3 Q Where were you assigned prior to working at the JTTF?

4 A The New York narcotics squad.

5 Q Was that also with the FBI?

6 A Yes.

7 Q Prior to that?

8 A I was an officer in the Air Force.

9 Q Have you participated in an investigation into the
10 defendant in this case Betim Kaziu?

11 A Yes.

12 Q What did you do in connection with the investigation?

13 A I viewed returns from MySpace data and subscriber report
14 for YouTube account.

15 Q Let's start with MySpace.

16 What is MySpace?

17 A It's a social networking site.

18 Q What is social networking?

19 A Social networking describes an online activity where
20 users would set up profiles, put information about themselves
21 online and then they can share information with other users.
22 I would liken it to setting up like a scrapbook of yourself
23 online and then being able to communicate via instant
24 messaging or email information from your online scrapbook.

25 Q Who can create a MySpace account?

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Hadzovic - redirect - Ariail

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1 A Anyone with a valid email address.

2 Q How does a person create a MySpace account?

3 A You need to register with personal information and then
4 validate the email address that you entered.

5 Q What sort of information can be posted on a MySpace
6 account?

7 A There is an About Me section, photos, hobbies, videos,
8 comments.

9 Q Who controls the content that's displayed on the MySpace
10 account?

11 A The user.

12 Q For an individual to log into a MySpace account is a
13 password necessary?

14 A Yes.

15 Q I'm showing you what's been marked for identification as
16 Government's Exhibits 402 A through F, which I am happy to
17 offer on consent. They have been previously provided to
18 counsel.

19 MR. DRATEL: Yes, Your Honor.

20 THE COURT: All right. They are received.

21 What are they? 402 A through F?

22 MR. KAZEMI: Yes, Your Honor.

23 THE COURT: Received.

24 (Marked.)

25 MR. KAZEMI: Thank you.

Hadzovic - redirect - Ariail

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1 Q I am going to direct your attention to 402 F which I am
2 placing on the Elmo.

3 Do you recognize that document?

4 A Yes.

5 Q What is that?

6 A It's a subscriber report for the MySpace page registered
7 under the email address Shut Up and Listen at AOL Dot Com.

8 Q Can you please just explain to the jury the information
9 that's set out on the document?

10 A Sure.

11 It's the user number that was given to the user by
12 MySpace.

13 And then the first name entered by the user when
14 setting up the page, after Abdul Wahab.

15 The last name entered, Al-Albani.

16 Country, AL, which is the country code for Albania.

17 The city entered Brooklyn.

18 The email dress that was verified by the user Shut
19 Up and Listen at AOL Dot Com.

20 Vanity URL.

21 Sign up by P number.

22 The date of sign up.

23 Q You said something about an IP.

24 What is an IP address?

25 A An IP address is a numerical label that's given to a

Hadzovic - redirect - Ariail

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1 computer when it accesses the Internet. It's given by a
2 service provider. So it -- it -- it's given to that computer
3 for the period of time that's it on the Internet at that
4 login.

5 Q I would like to turn your attention to page two of 402 F.
6 Do you recognize that document?

7 A Yes.

8 That is the activity report for all the logins under
9 the email dress Shut Up and Listen at AOL Dot Com.

10 Q What's the date of the last IP activity associated with
11 that particular account?

12 A The last login is August 26, 2009.

13 Q Can you just please explain to the jury what that means
14 in plain English?

15 A It just means that the very last login by the user for
16 their MySpace account is on August 26, 2009. So it -- it
17 remains exactly the same as it was then.

18 Q I am now showing you what's been marked for
19 identification as Government's Exhibit 401.

20 This is just for the witness, Your Honor.

21 THE COURT: Go ahead.

22 Q Do you recognize that item?

23 A Yes.

24 Q What is that?

25 A That's a Camtasia recording that I made of the MySpace

Hadzovic - redirect - Ariail

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1 space under Shut Up and Listen at AOL Dot Com.

2 Q What is Camtasia?

3 A It's a tool that allows the user to make a video
4 recording of whatever is on your computer screen.

5 Q Did you personally make the Camtasia recording that's
6 contained on that CD Government Exhibit 401?

7 A Yes.

8 Q How do you know that the account that you recorded and
9 that's on that CD is the account associated with Shut Up and
10 Listen at AOL Dot Com?

11 A Well, that's my handwriting. I made the CD.

12 Q How do you know that the account -- go ahead.

13 A Right.

14 In order to verify that it's the MySpace page
15 registered under that email address on MySpace you can search,
16 there is a search tool where you can just search for the page
17 associated with whatever email address. So I just typed in
18 Shut Up and Listen at AOL Dot Com and it brought up the page
19 for that email address. I can view it. I can't change that
20 page but I can view exactly what it looks like.

21 Q Does the Camtasia recording on that CD contain a true and
22 accurate recording of the page that you viewed on the day you
23 recorded it?

24 A Yes.

25 Q Without giving an exact date, did you make that recording

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Hadzovic - redirect - Ariail

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1 fairly recently?

2 A Yes.

3 MR. KAZEMI: The government offers 401, Your Honor.

4 THE COURT: Any objection?

5 MR. DRATEL: No, Your Honor.

6 THE COURT: Received.

7 (Marked.)

8 Q Agent Holmes, just one more question.

9 To be clear, if the user of MySpace account hasn't
10 logged on to that account since August 26, 2009, what does
11 that tell you about the account as it appears on this
12 recording?

13 A Right. It's exactly the same. It remains unchanged
14 since that last login.

15 MR. KAZEMI: Your Honor, with the Court's
16 permission, I would like to play the recording that's
17 contained on the CD.

18 THE COURT: Sure.

19 Q Agent Holmes, I would like to ask you to explain what the
20 jury is viewing right now.

21 A Okay. You can pause here.

22 This is the MySpace page that is registered by email
23 address owner of email address Shut Up and Listen at AOL Dot
24 Com. At the top of the page you can -- just pause -- this is
25 the banner that was entered by the user, Sayf Ul Islam.

Hadzovic - redirect - Ariail

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1 Then to the left of that banner is the profile
2 picture. That's also added by the user. We will take a
3 closer look at that in a second.

4 Underneath the banner are postings by the user of
5 the page, Abdul Wahab Al-Albani, please with Allah as my Lord
6 Mohammad as my messenger and Islam as my dean. Abdul Wahab
7 Al-Albani angry at the kuffar.

8 Q Who posts those comments?

9 A Those are user posted.

10 Go ahead and play it.

11 I will pause here.

12 This is the profile picture. Once again, posted by
13 the user. It's an individual with a sword and the black flag
14 that says to the brothers and sisters who live, love and fight
15 in the name of Allah.

16 You can play.

17 If we continue down, you can pause here.

18 The About Me section, again, posted by the owner of
19 the page, I bear witness that each of them was sharper than a
20 cutting sword, contribute to those who jumped into troubles
21 and made fierce attacks. Huge difference as between the
22 common people and those who have sold their lives to the Lord.
23 They took a smiling look at death while the sword gazed at
24 them frowningly. They turned their chests into shields for
25 the cause of Islam. When the shell of darkness closed and a

Hadzovic - redirect - Ariail

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1 wild beast bit us while our lands were bleeding and the
2 oppressors were making fierce attacks and the shining of
3 spears and the neighing of horses have faded from the battle
4 fields and the crying was drowned out by the sounds of drums
5 and trumpets. At that moment there rose like a storm and
6 brought down the enemy's palaces and told him we will never
7 symptom attacking you until you pull out of your homes.

8 Continue down.

9 Q I'm sorry. Who posted that?

10 A That is posted by the owner of the MySpace page.

11 There are videos posted on that right-hand side that
12 were uploaded by the owner of MySpace page.

13 You can pause here.

14 The third video down is a crying American soldier.
15 It is a little blurry to read it.

16 MR. KAZEMI: Your Honor, I can blow up that photo,
17 with the Court's permission.

18 THE COURT: You mean --

19 MR. KAZEMI: It is an exact duplicate of the image
20 on the MySpace page.

21 THE COURT: Go ahead.

22 MR. KAZEMI: Thank you.

23 A It says oh Allah, tighten the dunya upon them.

24 Q That's a video that can be played on the page?

25 A Yes.

Hadzovic - redirect - Ariail

638

1 You can pause here.

2 The -- the video underneath the crying soldier is
3 titled khattab, the sword of Islam. It's an individual with
4 an RPG or rocket repelled grenade.

5 Q That's also a video?

6 A Yes.

7 And continuing down, who I'd would like to meet.
8 Who I'd like to meet section also entered by the user of the
9 page.

10 At the bottom right section, the detail section,
11 that's also entered by the user of the page.

12 You can pause here.

13 You can note that the last entry under details,
14 occupation, that's MU and then there are six asterisks.

15 Back on the left side of the page, the middle of the
16 page, under interests, the user wrote, it has been
17 authentically narrated from our messenger, the best martyrs
18 are those who fight in the first line, not turning around
19 until they are killed. Those are the ones who seek the
20 highest chambers from jannah and your Lord laughs at them. If
21 your Lord laughs at a slave in this world there is no account
22 upon them. Hurry, hurry, ya shabaab. Rise to the victory of
23 your brothers and religion and ancestry, oh followers of
24 Mohammad. Now that fierce fighting has broken out, the eyes
25 become bloodshot, the ranks have engaged in battle and the

Hadzovic - redirect - Ariail

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1 swords have dashed -- these are like moments -- these are the
2 moments of severity, oh, steeds of Allah, ride forth, oh
3 breeze of jannah come forth. Oh how delightful is paradise in
4 this coming of near delicious and cool is its drink in the
5 Romans have -- and the Romans, the punishment has come near
6 disbelieving and far from their roots and upon me if I meet
7 them is to strike.

8 There are more videos posted under the interest
9 section.

10 Q Again, who posts those videos?

11 A The owner of the page.

12 The music section also entered by the user.

13 You can pause here.

14 And the movies section at the bottom, that's another
15 video clip, uploaded by the user. It's Osama Bin Laden
16 holding an AK 47. It's a video of an interview with Osama
17 Bin Laden where he talks about his outrage over a depiction or
18 caricature of the Prophet Mohammad.

19 Q Agent Holmes, you testified that some of those videos
20 could be played directly on the page, is that correct?

21 A Yes.

22 Q Can you just explain how that works?

23 A Yes.

24 You can just click on the play button on each of
25 those videos and play them.

Hadzovic - redirect - Ariail

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1 Q Were you able to view the videos on this page?

2 A Yes.

3 Q Were you able to record them as well?

4 A Yes.

5 MR. KAZEMI: Your Honor, if I may show the witness
6 government's 403 marked for identification?

7 Q Agent Holmes, do you recognize that?

8 A Yes.

9 Q What is that?

10 A That's the CD I made of the MySpace videos and the image
11 on the MySpace page attributed to Shut Up and Listen at AOL
12 Dot Com.

13 Q How do you know it's the same CD?

14 A I made it and that's my handwriting on it.

15 Q Does that CD contain true and accurate recordings of
16 those six videos and that one image?

17 A Yes.

18 Q As they appeared on the day that you recorded them?

19 A Yes.

20 MR. KAZEMI: The government offers Exhibit 403,
21 which includes sub exhibits A through G.

22 THE COURT: Any objection?

23 Any objection?

24 MR. DRATEL: No, no objection. I'm sorry, Your
25 Honor.

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Hadzovic - redirect - Ariail

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1 THE COURT: Received.

2 (Marked, 403 A-G.)

3 MR. KAZEMI: Thank you, Your Honor.

4 With the Court's permission, I'd like to play just
5 about 15 seconds of one video and then the complete second
6 video. It's about five minutes.

7 THE COURT: All right.

8 MR. KAZEMI: Thank you, Your Honor.

9 (Continued on next page.)

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Holmes-direct-Kazemi

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1 CONTINUED DIRECT EXAMINATION

2 BY MR. KAZEMI:

3 Q You testified earlier about a gentleman holdings an
4 RPG-7, correct?

5 A Yes.

6 Q Is that one of the videos you had an opportunity to view?

7 A Yes.

8 Q Do you recall what that video is called?

9 A Kattab The Sword of Islam.

10 MR. KAZEMI: Permission to publish, your Honor?

11 THE COURT: Yes.

12 (Video played.)

13 A The narrator is chanting, then the caption at the bottom
14 read The Sword of Islam, Sayaf Al Islam is the heading on the
15 top my MySpace.

16 (Video played.)

17 Q You testified about a video of an interview of
18 Osama bin Laden?

19 A Yes.

20 MR. KAZEMI: I would like to play that, your Honor.

21 THE COURT: Yes.

22 (Played)

23 Q Agent Holmes, in addition to reviewing the MySpace data,
24 you also mentioned reviewing some YouTube data?

25 A Yes.

Holmes-direct-Kazemi

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1 Q What is that?

2 A A web site that allows users to post videos and make
3 comments on other people's videos.

4 Q Who can create a YouTube account?

5 A Anyone with a valid e-mail address, like a MySpace
6 account, you have to validate the e-mail address.

7 Q For the individual to log into a YouTube account is a
8 password necessary?

9 A Yes.

10 Q What did you review in connection with this case?

11 A Subscriber information.

12 Q I'm showing you what's been marked for identification as
13 Government Exhibit 410.

14 MR. KAZEMI: Also offered on consent.

15 MR. DRATEL: Yes, your Honor.

16 THE COURT: Received.

17 (So marked.)

18 Q Do you recognize that document, Agent Holmes?

19 A Yes.

20 Q What is that?

21 A It's the account information for the YouTube account set
22 up under e-mail address Shutupnliisten@aol.com.

23 Q Let me ask you about that address. Do you notice
24 anything unusual about the spelling of it?

25 A Yes, S-H-U-T-U-P-N-L-I-I-S-T-E-N @AOL.COM.

Holmes-direct-Kazemi

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1 Q Is that the same e-mail address in connection the MySpace
2 data you reviewed?

3 A Yes.

4 Q Can you just explain to the jury very briefly what
5 information is contained on that YouTube record?

6 A It's the e-mail address I just mentioned that had to be
7 validated and confirmed, the user status, active, sign-up
8 dated May 1st, 2007, IP address, first name entered by the
9 person who set up the address or the account --

10 (Courthouse fire alarm sounds).

11 THE COURT: The only way to get this alarm off, as
12 soon as I send you back to the jury room, as soon as I send
13 you out, it will stop ringing.

14 Let's take a quick break. All rise.

15 (Jury leaves courtroom.)

16 THE COURT: We're in recess until the alarm stops.

17 (Recess.)

18 (Alarm ceases sounding.)

19 THE COURT: Bring the jury in, please.

20 (Jury enters courtroom.)

21 THE COURT: That wasn't painful. It's over. We're
22 ready to resume. Have a seat, please.

23 Mr. Kazemi?

24 MR. KAZEMI: Thank you, your Honor.

25 Q Agent Holmes, you were just explaining information on the

Holmes-cross-Dratel

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1 subpoena results from YouTube?

2 A Yes; I left off around sign-up day, May 1st, 2007, IP
3 address for that sign-up date and the first named entered
4 ABDURAHMAN, last name not provided, the country, U.S., postal
5 code, IP activity and the user name that was used when setting
6 up this account, Soldierofjihad.

7 MR. KAZEMI: Thank you very much.

8 THE COURT: Mr. Dratel?

9 CROSS-EXAMINATION

10 BY MR. DRATEL:

11 MR. DRATEL: I would like to put the MySpace back
12 on.

13 THE COURT: Someone will give you a hand. That's
14 in the laptop, right?

15 MR. KAZEMI: Yes, your Honor.

16 THE COURT: Everybody has it, at least one screen.

17 Q Good afternoon.

18 A Good afternoon.

19 Q This my MySpace, essentially available to anyone with a
20 valid e-mail address who signs up for MySpace?

21 A Correct.

22 Q They can view all the content we've looked at today?

23 A Yes.

24 Q There's no password to get into it?

25 A To change anything on the page, it requires a password.

Holmes-cross-Dratel

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1 Q But to view, even to get access to the videos, doesn't
2 require a password or anything like that?

3 A Correct.

4 Q I want to go through the content of the page. If you
5 could see it, on the left side, the left margin where it says
6 the following, 20 in parentheses, what is that?

7 A I believe that's other accounts on MySpace that this user
8 is following.

9 Q It includes, the first one, 50 Cent?

10 A Yes.

11 Q The second one is Martyrs?

12 A Right.

13 Q In This World, Tony Io (ph)?

14 A Yes.

15 Q Michael Madsen. You know who he is?

16 A Actor.

17 Q He is in a lot of action movies?

18 A Yes.

19 Q Lloyd Banks, right?

20 A Yes.

21 Q You know who Lloyd Banks is?

22 A No.

23 Q Lil Wayne?

24 A Yes.

25 Q He's a rapper?

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Holmes-cross-Dratel

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1 A Yes.

2 Q Lebron James?

3 A Yes.

4 Q Basketball?

5 A Yes.

6 Q Special basketball player?

7 A Yes.

8 Q Under that is Top Friends, a list of other people that he
9 communicates with, the account holder communicates with?

10 A Yes.

11 Q And the comment section posted by other people?

12 A Correct.

13 Q Can he post a comment himself as well?

14 A On other people's pages.

15 Q Not on his own? These are all from other people?

16 A Right.

17 Q The videos, one which was played, but there were a number
18 of them in the margin, other spots on the page.

19 A Right.

20 Q You found out where some of them were originally from,
21 right?

22 A Right.

23 Q Basically publicly available videos, either on YouTube,
24 one said Reuter's as introduction, the Osama bin Laden, a
25 Reuter's broadcast?

Holmes-cross-Dratel

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1 A Yes.

2 Q All publicly available as far as you know?

3 A Yes.

4 Q Do you know how many types of videos like that there are
5 on YouTube?

6 A I'm sure countless.

7 Q Do you know how many hits there are on those type of
8 YouTubes, hits, people who look at the video a little bit, all
9 the way through, whatever?

10 A I'm sure there are a lot of hits.

11 Q To your knowledge, none of the material we're looking at
12 here, either the videos, content, the banner on the top left,
13 none of that is prohibited by MySpace, as far as you know?

14 A Correct.

15 Q Nothing about this account that would cause, to your
16 knowledge, cause MySpace to shut it down or somehow not permit
17 what's on there?

18 A To my knowledge, right.

19 Q With respect to the YouTube records, if the account
20 holder posted a comment to another video, it would come up as
21 Soldierofjihad says?

22 A Right.

23 Q If he posted a video, it would say Soldierofjihad posted
24 this video?

25 A Right.

Booth-direct-Ariail

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1 Q If someone wants to find out either with respect to this
2 my MySpace or YouTube account, if someone wants to find out,
3 like you, FBI agent, wanted to find out who the account holder
4 was for that particular account, you could subpoena the
5 records from A O L, that would give you a name rather than
6 just a user?

7 A Right.

8 Q Credit card information, all the other personal
9 information that is used to establish an A O L account,
10 correct?

11 A Correct.

12 Q Which is much more intensive, much more detailed than
13 what's required for these two types of accounts?

14 A Correct.

15 MR. DRATEL: Nothing further.

16 Thank you.

17 THE COURT: Thank you, Mr. Dratel.

18 Anything further?

19 MR. KAZEMI: Nothing from the government.

20 THE COURT: You're excused. Have a good day.

21 (Witness excused).

22 THE COURT: Mr. Ariail, have a seat while the
23 witness is sworn.

24 MR. ARIAIL: Yes, sir.

25 THE COURT: Thank you.

Booth-direct-Ariail

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1 B R I A N S C O T T B O O T H

2 having been duly sworn/affirmed, was examined
3 and testified as follows:

4 THE CLERK: Please have a seat.

5 State and spell your name for the record.

6 THE WITNESS: Brian Scott Booth, B O O T H.

7 DIRECT EXAMINATION

8 BY MR. ARIAIL:

9 MR. ARIAIL: I'll be using the Elmo with this
10 witness, your Honor.

11 THE COURT: Okay.

12 Q Mr. Booth, by whom are you employed?

13 A I'm employed by the Federal Bureau of Investigation,
14 New York Division.

15 Q For how long have you worked with the FBI?

16 A I've worked since 1996.

17 Q What's your title?

18 A Information technology specialist, forensic examiner.

19 Q Do you work for a specific unit at the FBI?

20 A Yes.

21 Q What is that unit?

22 A The Computer Analysis Response Team.

23 Q Is there a short name for the Computer Analysis Response
24 Team?

25 A CART.

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Booth-direct-Ariail

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1 Q Generally, what responsibilities does CART have within
2 the FBI?

3 A As a forensic examiner, my duties are to analyze,
4 preserve, document digital media for agents and for courtroom
5 testimony.

6 Q When you say digital media, what do you mean?

7 A Hard drives, CDs, camera phones, things of that nature.

8 Q What sort of specialized training have you taken in order
9 for you to become a forensic examiner?

10 A Currently we have to take numerous amounts of training,
11 some to do with quality control, imaging, evidence control.

12 We have to take A+ technical certification, Net+
13 certification.

14 Q What are those?

15 A The Net+ is a national test certification that pretty
16 much trains you on how to use networking which is routers,
17 switches, things of that nature, understand how packets move
18 around the internet. A+ is mainly a technical certification
19 for knowing how to use a computer as far as building one from
20 the ground up, knowing what all the pieces are, then the
21 operating systems, how they work.

22 Q Are you Net+ and A+ certified?

23 A I am.

24 Q Are there other types of training that you had to undergo
25 to become a forensic examiner at the FBI?

Booth-direct-Ariail

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1 A Yes, we had basic data recovery and analysis class we had
2 to take and we had to take FTK boot camp.

3 Q What's the FTK boot camp you're referring to?

4 A We call it Forensic Tool Kit, a product made by access
5 data and it's a forensic software suite, like the Swiss Army
6 knife of programs that most forensic examiners use.

7 Q Briefly, generally, what does that do?

8 A FTK tool kit, look at any other files that might be
9 hidden, all the files that are active that are running on a
10 computer system, even without stuff that a normal user would
11 not be able to see.

12 Q How long have you been certified as a forensic examiner
13 with the FBI?

14 A Since October of 2008.

15 Q For that, what did you do?

16 A I was an information technology specialist working mainly
17 doing network administration.

18 Q Where?

19 A For the Federal Bureau of Investigation.

20 Q At the FBI, as a forensic examiner, approximately how
21 many cases involving digital media have you been involved
22 with?

23 A Close to 50.

24 Q Have you testified previously in court?

25 A Yes, I have.

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Booth-direct-Ariail

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1 Q Where is it you testified?

2 A Southern District of New York.

3 Q Were you qualified as a forensic expert during your
4 testimony in that case?

5 A Yes, I was.

6 MR. ARIAIL: At this point, the government moves to
7 qualify Brian Booth as an expert in forensic examination of
8 digital media.

9 MR. STEINGLASS: No objection.

10 THE COURT: I'll receive him as such an expert.
11 Go ahead.

12 Q Generally, could you just explain to the jury what role
13 at CART, what role CART has in the investigation of a case
14 involving digital media?

15 A In order for a piece of digital media, say a laptop or
16 desk top to be presented into court, we have to do a thorough
17 investigation of looking what's on the drive.

18 What we usually wind up doing is taking the drive
19 out of the computer, making an exact copy of the drive because
20 we never touch the drive itself, look at that copy. It's a
21 forensic copy, a copy that's made exactly like a negative is
22 for a photo. We can produce many copies of these, look at
23 those copies and those copies are as true as the original.

24 We then break that down, allow into FTK, allow the
25 agent to come, review the information that's on the computer,

Booth-direct-Ariail

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1 deem what's relevant for themselves and we create a disk
2 afterwards. That's the report disk, allows the agents to
3 bring that into trial.

4 Q Could you walk the jury just through the specific steps
5 that you would take in order to process digital media at the
6 FBI?

7 A Normally, we get the evidence from Evidence Control or
8 the agents themselves, bring the evidence in. We verify first
9 that we have either a legal authority to touch the evidence
10 before we even take it from them. After that, we sign off on
11 receiving the evidence.

12 We usually then make a copy of the evidence through
13 what's called an FTK imager, one of the pieces of software in
14 FTK's suite, verify that image copy we make is an exact
15 replica of what was brought to us.

16 Q How is it that you verify the image that you make is an
17 exact replica of a hard drive of whatever it is you're
18 examining?

19 A Forensic examiners use what's called a hashing of a
20 computer. What that is, taking the zeros and ones on a hard
21 drive -- every file that comes on the computer is 0/1 base.
22 Using those zeros and ones, putting it through an algorithm,
23 the sum that gets spit out is very unique, akin to a
24 fingerprint. What we then do is we take that fingerprint, we
25 then image the drive and after the drive is imaged, we do that

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1 MB5 or hashing algorithm again. If they both match, it's true
2 to the same, one-to-one.

3 Q What's the software you use to do that?

4 A We use MD5, a Message Digest 5, FTK imager that does that
5 automatically within the software.

6 Q After you verify a copy of the digital media is exactly
7 like the original, then what do you do?

8 A Then we use the FTK program itself to process that piece
9 of media. What it does, it pretty much goes from the very
10 beginning of the drive, looks through everything until the
11 end, finds out what's active on the computer as far as regular
12 files that you can see.

13 It looks for hidden files, partitions on the
14 computer, also looks for deleted files, things of that nature.

15 It presents it in a form you can see in front of the
16 computer, be able to see what kind of files, say, PDF files or
17 Word document files are there. It puts it in groups to make
18 it more manageable to see what's on the computer.

19 Q You mentioned FTK, that the software helps you recover
20 deleted files. Can it recover damaged files?

21 A Yes.

22 Q Does it cover damaged or deleted files in software?

23 A It's very interesting on how a computer stores data on a
24 hard drive. It's kind of akin to a library system where in
25 order for the computer to know where to place it on the hard

Booth-direct-Ariail

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1 drive, it kind of uses like a catalogue file. When it puts a
2 document, say, on the hard drive, uses the catalogue system to
3 identify where that is on the computer. After it's done, say
4 you delete the file, it just pretty much goes in the
5 catalogue, rips it up, goes on its way, kind of lazy in that
6 sense where it doesn't actually go to a row, get the book out.

7 Say you put a whole bunch of encyclopedias up on a
8 shelf. All of a sudden the librarian says we don't need them
9 anymore, they'll pretty much go to the catalogue, pick out the
10 card of the encyclopedia, rip it up. The books are still
11 there. What FTK does, comes in on the back end, says I'm
12 going to do an audit. I don't care what that card catalogue
13 says, I'll still use it to see what's on there. I'm going to
14 go one step further, actually go down that row, see what books
15 are on that shelf. If it turns out the whole set of
16 encyclopedias are there, it would register is it back. FTK
17 works that way with files on the computer.

18 Q Tell the jury, what's the difference between RAM and a
19 hard drive on a computer?

20 A The hard drive is where most people store the data. The
21 operating system or the system that actually allows you to
22 utilize the computer through an interface to see what you're
23 doing, that has to be saved somewhere. Usually we save it on
24 the hard drive. The RAM is what the operating system uses to
25 do it's job from day-to-day. It's very fast. The hard drive

Booth-direct-Ariail

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1 is a lot slower but you can store stuff. RAM, though, when
2 you turn off the system, it goes away. It only works while
3 you're using it. If you're looking at Internet Explorer or
4 Netscape or any of these other programs, suddenly the computer
5 turns off, all that information is gone what you were working
6 on until you restart the computer. RAM is not constant. As
7 soon as -- it's dynamic. As soon as you turn it off, it's
8 gone.

9 (Continued on next page.)

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Booth - direct - Ariail

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1 BY MR. ARIAIL:

2 Q Now, when a person uses a computer does the information
3 sometimes get saved on a hard drive without the person
4 actually hitting a button to save?

5 A Yes, all the time.

6 Q How did that happen? Give some examples of that.

7 A One example is Internet Explorer, which probably a lot of
8 people have used here. When you go to a website, what
9 Internet Explorer does, it saves that website onto the hard
10 drive. The reason why it does this is to try to speed up the
11 process so if you want to go back to that website, say Google,
12 it will first check to see if it's got it on its hard drive
13 and if it does it will present that to you first. If not, it
14 will go on the internet and pull down the new web pages.

15 Most of those pages are saved for a number of days,
16 even weeks and months depending on how the user wants to set
17 it up. Some people like to close that out every now and then.
18 You have to do it on the back end. You have to go in and do
19 that yourself. A lot of things get saved to a computer like
20 that.

21 Q What are some of the other things or data that are saved
22 on a hard drive or if somebody doesn't save it?

23 A What happens, we were talking about RAM before, you might
24 have a limited amount of this RAM. When the computer runs out
25 of RAM, it still needs to put programs up on our screen. What

Booth - direct - Ariail

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1 it will do is use actual hard drive space in lieu of having
2 RAM when it runs out of space. Say you are typing something
3 and minimize it and go on to Internet Explorer. That file
4 that's minimized will go to the hard drive and is saved in a
5 page file system and it's a pagefile.sys. This is a file that
6 resides on the C drive of your computer. So when this is
7 saved there, all the files that you have been working on, will
8 eventually go through this pagefile.sys if there is not enough
9 memory on your computer.

10 Q Are there other examples you can give where stuff may
11 have been saved without intentionally saving it?

12 A Well, a lot of times the users will actually have a bunch
13 of files that they want to get rid of and when they delete
14 them, as I did with the CART catalogue system, it's still
15 saved on the computer and not touched any more. You would
16 have to go and put another book and replace the one that's up
17 there to actually change it out.

18 Q In FTK software that you talked about, does it allow you
19 to recover that type of information that you just testified
20 about?

21 A Yes.

22 Q Now, was CART involved in the forensic analysis of
23 digital media recovered from Betim Kaziu?

24 A Yes.

25 Q Approximately, when was it involved in that analysis, if

Booth - direct - Ariail

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1 you know?

2 A I believe it was October of 2009.

3 Q Generally, can you give the jury an overview of the
4 CART's involvement in the analysis of digital media related to
5 Betim Kaziu.

6 A One night I got a call to respond to take some digital
7 media and process it. What I did was I met with the agent
8 that brought it directly from the evidence control system. He
9 brought the evidence out to me. I checked the information,
10 the legal information on whether or not I could touch this
11 stuff. And what I did was I processed it in FTK. In doing
12 the process I'm also saying that I made a copy of the drive
13 and verified that the image was exactly the same as the way I
14 got the after processing it in FTK.

15 I made the agent come out and actually review the
16 data that was on the computer and mark what was important for
17 this case. I then generated what's called a Blue Ray disk of
18 the results and copied the files on to that Blue Ray disk and
19 I think that's what I brought here today.

20 MR. ARIAIL: Your Honor, if I may publish what's in
21 evidence as Government's Exhibit 601.

22 THE COURT: Okay.

23 Q Do you recognize this?

24 A Yes, I do.

25 Q What do you recognize this to be?

Booth - direct - Ariail

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1 A It's a laptop tap, a Dell laptop.

2 Q Anything in particular about this Dell laptop?

3 A We have our CART lab sticker, which is a unique number
4 for a piece of evidence.

5 Q And is this the laptop that you imaged?

6 A Yes, it is.

7 Q Once you were done imaging, can you explain what you did
8 next?

9 A Well, after the image was verified, I used, as I said
10 before, an FTK tool kit to actually look at the information
11 and to have the agent then come down and review the stuff that
12 was on the computer.

13 Q Did you make a determination that the image that you made
14 and that laptop were exactly the same?

15 A Yes.

16 Q When the agent came down, what happened after that?

17 A She book marked, which is a way of going into the FTK
18 program and choosing the files that are pertinent to a case.

19 Q How long did that process take?

20 A The whole process was a week from start to finish.

21 Q Did you assist in any way in that process?

22 A The agent had asked me to be able to get history from the
23 internet for her because she didn't know how to find it.

24 Q Did she ask you to do anything else?

25 A That was pretty much it. I had to make sure the history

Booth - direct - Ariail

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1 and the Google history was saved.

2 Q After the agent completed her review of the data on the
3 FTK software, the image copy, what happened next?

4 A I made a Blue Ray disk of the FTK report. I ran a report
5 on FTK that actually puts the stuff onto a CD so the agent can
6 then use it for court testimony.

7 MR. ARIAIL: Your Honor, just to publish to the
8 witness.

9 THE COURT: Go ahead.

10 Q Do you recognize this?

11 THE COURT: It is still a little fuzzy.

12 MR. ARIAIL: May I approach? I think it's the
13 glare.

14 THE COURT: No it's not. Stop moving it.

15 A Yes, I do.

16 Q What is this?

17 A That's the Blue Ray disk that I generated.

18 Q Generated from what?

19 A FTK.

20 Q Can you tell the jury just generally what sort of items
21 were book marked on the FTK Blue Ray disk?

22 A I know documents, graphics files, page file information,
23 chat information that seemed to come from page files.

24 Q Was a video or audio on that?

25 A Yes, multimedia files were also.

Booth - direct - Ariail

663

1 Q Prior to your testimony today did you recently review a
2 number of items that are contained on the FTK Blue Ray DVD?

3 A Yes, I did.

4 Q I'm going to show you what has been marked as
5 Government's Exhibits 604, 605, 606, 607, 608, 609, 610, 614,
6 620 and 810?

7 THE COURT: These are for identification?

8 MR. ARIAIL: Your Honor, they are in on consent as
9 well.

10 THE COURT: They are all received.

11 (So marked.)

12 MR. ARIAIL: Would you like me to read them again,
13 your Honor?

14 THE COURT: No, thank you.

15 Q What's marked as Government's Exhibit 604 is on the
16 screen. What is this?

17 A I do recall it's one of the images that was found on the
18 computer.

19 Q On screen is 605; do you recognize this?

20 A Yes, I do. It's another one of the graphic images that
21 were found on the computer.

22 Q Do you recognize this? It's marked 606.

23 A Yes, I do. One of the graphic images that were found on
24 the computer.

25 Q On screen is 607. Do you recognize this?

Booth - direct - Ariail

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1 A Yes, I do.

2 Q What is this?

3 A It's another graphic image that was found on the
4 computer.

5 Q On screen is 608. Do you recognize this?

6 A Yes, I do.

7 Q What is this?

8 A It's another one of the graphic images that was found on
9 the computer.

10 Q Now, did you find documents as well as graphic images on
11 the computer?

12 A Yes, I did.

13 Q Showing on screen Government's Exhibit 609. Do you
14 recognize this?

15 A Yes, I do.

16 Q Could you read this aloud?

17 THE COURT: Slowly.

18 A They say he who believes in Allah is a terrorist.

19 He who when the call to jihad is made doesn't snore.

20 When the cry of the Muslim women and children occurs
21 doesn't await no more.

22 Sharp is the spear, he's ready to strike.

23 For the hur al-ayn he will delight.

24 In the soul of the green bird his soul will fly.

25 In jannah with wine and thrones raised high.

Booth - direct - Ariail

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1 In front of the Allah leaking in blood he will be
2 questioned why?

3 For you my Rubb I wanted to die.

4 Can I go back and be killed for your sake again?

5 No my slave the full breasted females are waiting
6 and it has been written by the pen.

7 Abdurrahman Al-Albani.

8 Q Showing on screen Government's Exhibit 610, do you
9 recognize this?

10 A Yes, I do.

11 Q What do you recognize this to be?

12 A Another document that was found on the computer system.

13 Q If you could read the first sentence of that?

14 A My dear brother in Islam I wanted to write you a letter
15 for the sake of Allah and for the safety of our imam which is
16 more important to me than the whole world and everything in
17 it.

18 Q I'm going to show on screen Government's Exhibit 614. Do
19 you recognize this?

20 A Yes, I do.

21 Q What is this?

22 A I remember this as another document that was found on the
23 system.

24 Q Could you read the first two lines of this document, 614
25 that are in English?

Booth - direct - Ariail

666

1 A And where are those who seek martyrdom sincerely?

2 Seeking to die in honor.

3 Q Showing on screen Government's Exhibit 620. Do you
4 recognize this?

5 A Yes, I do.

6 Q And what is this?

7 A This is another document that was written onto the Blue
8 Ray disk that was found on the computer.

9 MR. ARIAIL: At this time, your Honor, I would offer
10 Government's Exhibit 619 on consent and request permission to
11 publish it.

12 THE COURT: Received.

13 (So marked.)

14 Go ahead.

15 Q Mr. Booth, do you recognize this?

16 A Yes, I do.

17 Q What do you recognize this to be?

18 A That's the first number of lines from the index.dat file,
19 which is the Internet Explorer master browsing history for the
20 computer, for that user profile that was on the system.

21 Q Is this the entire Internet Explorer master browsing
22 history for that computer?

23 A The only history, that master browsing history that was
24 contained, yes.

25 Q On this report there are a number of entries on the left

Booth - direct - Ariail

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1 here, URL, user name, page title, last accessed. Could you
2 explain those to the jury and what the meaning of those terms
3 are?

4 A Well the URL is the web page that the person had gone to.
5 At some point they can actually pull down graphic images and
6 multimedia.

7 The user name is the account that was used to pull
8 down the information.

9 Your last accessed times one and two are the times
10 that the information was last looked at.

11 The last checked was the last time the person had
12 gone to that page.

13 And the expires means how long the index.dat file
14 will save that information for.

15 The hits and use counts means how many times you've
16 gone to that page afterwards.

17 Q What's the last access number for this URL?

18 A It is 8-27 of 2009.

19 Q And the dates on the internet explorer master browsing
20 history, do you have any reason to believe whether or not
21 these are wrong or right?

22 A No.

23 Q You don't believe that they are wrong?

24 A No. I don't believe they are wrong.

25 Q Why not?

Booth - direct - Ariail

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1 A Well, when we take in the evidence we verify that the
2 computer time that we're seeing matches the computer time
3 that's on the computer at that time. We look at our watches
4 and we actually look at the time on the computer and verify
5 that it's the same time.

6 Q Did you do that in this case?

7 A Yes, I did.

8 Q What did you determine?

9 A Within probably a minute or two of the time it matched.

10 Q I'm going to show on screen, your Honor, what's already
11 been offered as 810?

12 THE COURT: Received. It's already been received?

13 MR. ARIAIL: I believe it's offered on consent and
14 received already.

15 THE COURT: Okay. Go ahead.

16 Q Do you recognize this document?

17 A Yes, I do.

18 Q Where is this document from?

19 A It's from the laptop.

20 Q If you could, could you read just the first line or two
21 of this document?

22 A I bear witness that each of them was sharper than a
23 cutting sword. Tribute to those who jumped into troubles and
24 made the fierce attacks. Huge difference is between the
25 common people and those who have sold their lives to their

Booth - direct - Ariail

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1 lord.

2 Q The next sentence?

3 A They took a smiling look at death, while the sword gazed
4 at them frowningly. They turned their chests into shields for
5 the cause of Islam.

6 MR. ARIAIL: At this time, your Honor, I would offer
7 Government's Exhibit 618 on consent.

8 THE COURT: Received.

9 (So marked.)

10 MR. ARIAIL: Request permission to publish it?

11 THE COURT: Yes.

12 Q Mr. Booth, do you recognize this document?

13 A Yes, I do.

14 Q What is this?

15 A This is a NTUser Registry Report that came off the
16 computer.

17 Q What's a NTUser Registry?

18 A A NTUser file on a computer is part of what controls the
19 computer. It actually saves information about the user's
20 functions on it, pretty much the settings for how a computer
21 works. In the FTK product what we do is we look at the
22 registry which is what controls the whole computer and take
23 out information like this to show what the setting would be
24 for the computer.

25 Q What does this NTUser Registry Report reflect?

Booth - direct - Ariail

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1 A This registry report reflects the user that was Betim, I
2 think as far as the profile on the computer. It says for this
3 here on how it was used for Just Voip.

4 Q What's Just Voip?

5 A It's a software for making phone calls over the internet.

6 Q Below here what's listed, just the Just Voip entries?

7 A There is the call record of the most nine recent call
8 records that was used. It's like a favorites of what the
9 person was using. It might be -- he might have used more than
10 just nine. Depending on how the software writes it into the
11 registry, it might only save the last nine or ten.

12 Q Turning to page three of the document, what is this data
13 that's under Software Microsoft Windows Live Contacts
14 Database?

15 A Windows Live is another chat program that is being used
16 on the computer. What we are seeing here is the information
17 from the registry that tell us the contact list of what the
18 person had used.

19 Q Could you read aloud the e-mail addresses and the contact
20 list that I am pointing to?

21 THE COURT: Could you enlarge it a little bit? It's
22 really hard to see.

23 MR. ARIAIL: I'm sorry.

24 Thank you.

25 Q What's the first e-mail address listed there?

Booth - direct - Ariail

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1 A Abdurahaman1988@live.com.

2 Q What's the third e-mail address listed there?

3 A Siiana.kaziu@hotmail.com.

4 Q What's the sixth e-mail listed there?

5 A Islamictawhld.

6 Q Is that a L or I?

7 A It's hard to tell. I see it's an I. @aim.com.

8 Q And on page four, could you read the e-mail address that
9 my finger is on?

10 A Mourad_a21@hotmail.com.

11 Q Under that?

12 A Armend00@hotmail.com.

13 Q Below that?

14 A Ahmed_88@live.co.uk.

15 Q Now, the computer that you looked at, Government's
16 Exhibit 601, that you made the copy of, did you find page file
17 information in that computer?

18 A Yes, I did.

19 Q And just generally what did that page file information
20 reflect?

21 A The page file is what the computer uses in place of
22 having enough RAM. I explained before on how the computer
23 when it reaches a certain amount of using of RAM it has to use
24 more information so it saves stuff to the hard drive in order
25 to recoup memory for your programs that you are using to work.

Booth - direct - Ariail

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1 Q If you were to chat on line would it be possible that you
2 get information caught in the page file?

3 A Yes.

4 Q And how does that work?

5 A It can happen in a number of ways. But the one I suspect
6 most is that while a user is typing something or looking on
7 the internet for something they might have the chat session
8 open and then minimize it which would send it to the page file
9 because it's not being used regularly at that point. That
10 stuff would be saved while he's doing something else on the
11 computer.

12 Q Can you tell, other than the fact that it's in the page
13 file, can you tell much about the information in a page file?

14 A You can, definitely.

15 Q What's that?

16 A You can understand a lot from the page file. A lot of it
17 can be program speak where you don't really understand it.
18 But normally you can see a lot of text typed in.

19 Q If a chat got caught in a page call, could you tell who
20 the sender and receiver?

21 A It would be hard to understand that.

22 MR. ARIAIL: At this time I would offer 200, 202,
23 203, 204, 205, 207, 208 and 210. It's on consent I would
24 request permission to publish these.

25 THE COURT: All right of the those exhibits are

Booth - direct - Ariail

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1 received.

2 (So marked.)

3 THE COURT: Go ahead.

4 Q Mr. Booth, I direct your attention to Government's
5 Exhibit 207 on the screen. Can you read the last line of
6 Government's Exhibit 207?

7 THE COURT: It's like an eye exam.

8 MR. ARIAIL: I'll move it in. Sorry about that.

9 THE COURT: Thank you.

10 A He's an enemy of Allah.

11 Q Government's Exhibit 204 on screen. Can you read that?

12 A Sulo made up his mind that he's coming back or he's just
13 thinking it.

14 Q Showing on screen Government's Exhibit 203. Can you read
15 the fourth line down?

16 A I wanna be amongst those mentioned.

17 Q And Government's Exhibit 202 on screen: Can you read the
18 last two lines?

19 A If Allah wills that I will be amongst the nabblyeen, the
20 siddiqeen, the shuhada and the saliheen.

21 THE COURT: Hang on one second.

22 Q And showing on screen Government's Exhibit 208. Three
23 lines in, could you read what's said there?

24 MR. STEINGLASS: Excuse me, your Honor. I hate to
25 interrupt. We have no objection to the point that it's

Booth - direct - Ariail

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1 admissible having come from the computer, as I understand it.
2 But some of the content here, as I think the question makes
3 clear, it's not who is talking and who it's attributed to. On
4 that ground, perhaps we could approach.

5 THE COURT: Denied. Go ahead. It's in evidence.

6 MR. STEINGLASS: Note my objection.

7 THE COURT: Noted.

8 Q Mr. Booth, are you able to tell by reviewing this who is
9 talking or sending the chat in this document?

10 A No, I am not.

11 Q Are you able to tell whether somebody is receiving this
12 information?

13 A No, I am not.

14 Q Can you tell anything about this document, other than the
15 fact that it was found in the page file information in the
16 computer that we looked at earlier?

17 A No, I cannot.

18 Q Could you read starting at the second line down?

19 A Timbo. You went to Obamas lecture? Abdul Wahab says:
20 You mean Sheikh Obama. I have brothers here saying he's a
21 good speaker Aadem Al-Aalbani says.

22 Q If you skip down to the --

23 THE COURT: You can read it. It's in evidence.

24 Q I'll read it. Does it say: He's a great speaker. He's
25 a great speaker, dude. He's still a kafir?

Booth - direct - Ariail

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1 A Yes.

2 Q Other than processing the hard drive and recovering the
3 images that we looked at here today, did you have any
4 additional involvement in the investigation related to
5 Mr. Kaziu?

6 A No, I did not.

7 Q When is it that you learned you would be testifying in
8 this case?

9 A About a week ago.

10 MR. ARIAIL: Thank you for your time.

11 THE COURT: We kind of got thrown off track with
12 that fire drill.

13 We're going to go to five. Let's take a five-minute
14 break. Don't discuss the case. All rise.

15 (Jury excused.)

16 THE COURT: I viewed, by the way, the excerpt from
17 the video that was provided this morning and over the defense
18 objection I'm going to allow that to be played. I don't think
19 there's any prejudicial effect of that video that can't be
20 ameliorated by an instruction to the jury.

21 MR. DRATEL: Did you say that the court intended to
22 give an instruction?

23 THE COURT: Yes.

24 MR. DRATEL: Okay.

25 THE COURT: We'll resume in five minutes. You have

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1 some cross-examination of this witness, I take it?

2 MR. STEINGLASS: Yes, your Honor. Very brief, I
3 think.

4 THE COURT: Then you have your next witness ready.

5 MR. DuCHARME: We have our expert. I have some
6 mechanical things that I want to ask you about now or later.

7 THE COURT: Go ahead.

8 MR. DuCHARME: Mr. Kohlmann has suffered a recent
9 sort of medical condition. He's asked if he be permitted to
10 stand for most, if not all, of his testimony because he's very
11 uncomfortable when he's seated.

12 THE COURT: Any objection?

13 MR. DRATEL: No, your Honor.

14 MR. DuCHARME: We have a couple of boards. I'm
15 going to be using the laptop and I would like to play some
16 things and have him show the jury some things simultaneously
17 without flipping back and forth. With your permission,
18 Mr. Kohlmann can step down maybe and use the boards to point
19 some things out to the jury while they are seeing it on the
20 screen.

21 THE COURT: I'll allow it. You can always
22 reposition yourself around the courtroom so you can actually
23 see what he's doing. Feel free to come up here.

24 MR. DRATEL: Thank you, your Honor.

25 Also, after a lot of discussion with the government,

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1 we've managed to narrow, just because now we have a better
2 idea of what they are actually going to elicit from
3 Mr. Kohlmann, as possessed to his report and some other
4 materials, there are some additional issues beyond the Cole.
5 I realized I left my notes of what we still disagree on.

6 (Pause.)

7 (Continued on next page.)

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1 THE COURT: You can step down, if you want.

2 THE WITNESS: Thank you, Your Honor.

3 MR. DRATEL: One is in discussion of Anwar
4 Al-Awlaki, the audio files that have come in and that are
5 going to be played for the expert, in background, my
6 understanding is that it's his intention to talk about with
7 respect to Al-Awlaki his involvement perhaps in other cases.
8 For example, his contacts with Major Hasan and the Fort Hood.
9 But also his involvement in other cases, I guess, is what it
10 was.

11 MR. DuCHARME: With respect to defense counsel
12 raised an issue with me as to whether or not I expected
13 Mr. Kohlmann to testify, for example, that Al-Awlaki has
14 incited other specific people to commit violence and go into
15 detail perhaps about Fort hood massacre, I have spoken to
16 Mr. Kohlmann. I have told him I don't intend to elicit that
17 from him, if he could avoid going into those kinds of subject
18 matters. We don't --

19 THE COURT: Yes.

20 MR. DuCHARME: Just to avoid it. I don't think it
21 will be an issue.

22 MR. DRATEL: Okay. Still one is -- with respect to
23 Al Qaeda and operationally, I understand he's going to talk
24 about assassinations or assassination plans with respect to
25 Western leaders like President Clinton and all that. So we

1 would obviously object to that. Even to the extent it's noted
2 on any videos clips that might be played, we would object to
3 that on 403 grounds.

4 THE COURT: Just make your -- I may sustain it, that
5 objection. I probably will. Just --

6 MR. DRATEL: I wanted to alert the Court.

7 THE COURT: Let's do it on the fly.

8 MR. DRATEL: Also, I just wanted to hand up to the
9 Court four cases that I may be relying on in terms of some of
10 these arguments with respect to trying to keep it narrow. One
11 is United States v Al-Moyaad which was out of this district.
12 It is just about prejudice and going sort of beyond the scope
13 of a -- it's not about expert testimony, but fact testimony
14 generally, just going beyond the scope of the charges. I know
15 the Court will be careful in this case.

16 Another is -- two others that are -- have to do with
17 Mr. Kohlmann himself. United States v Amawi, which is out of
18 the Northern District of Ohio. Just in terms of finding that
19 the jury is capable of making, drawing certain conclusions, I
20 understand the nature and I am not objecting to certain types
21 of testimony but if he tries to go beyond, that I will be
22 objecting.

23 And the same thing with United States v Abu-Jihaad,
24 out of the District Court of Connecticut. I could just -- so
25 the Court has a copy of what we will be relying on.

1 THE COURT: The defendant's name was Jihaad in that
2 case?

3 MR. DRATEL: Abu-Jihaad. He was a Navy --

4 THE COURT: Okay. See you in five minutes.

5 (Recess taken.)

6 (The following occurred in the absence of jury.)

7 THE COURT: Are you all set?

8 MR. DRATEL: Your Honor, we just have one -- I
9 apologize.

10 THE COURT: That's okay.

11 MR. DRATEL: I apologize for bearing the lead on
12 this.

13 There are two expert reports from Mr. Kohlmann, one
14 that we received I think in March and one that we just
15 received about a week and a half ago. We are objecting to the
16 second one and any opinions based on it simply because of
17 timeliness. We would have had an opportunity to get our own
18 witness, particularly with respect to the coastline video and
19 his analysis of it in the context of martyrdom videos and we
20 think that we would have been able to -- with the proper
21 amount of time, have been able to get an expert to come in and
22 establish obviously the contrary.

23 That's our objection to the opinion with respect to
24 the -- the witness' analysis of the coastline video.

25 THE COURT: Okay. Not having seen either report, I

1 am not sure what the difference is. I take it, your objection
2 is on procedural grounds because you got the second report too
3 late. You want to preclude any testimony that is not
4 reflected in the first report.

5 MR. DRATEL: Correct, Your Honor.

6 MR. DuCHARME: Your Honor, our witness had a medical
7 condition. There really wasn't much we could do about it.

8 The new piece of information essentially that's
9 contained in the later report is that the witness was asked to
10 look at the coastline video, what we have argued is a
11 martyrdom video, and to analyze it in the context of other
12 jihadist type material. We would expect him to say if asked
13 is that that video has certain elements in common with other
14 videos that he's reviewed that were essentially last will
15 videos by people who were martyrs.

16 He is not going to conclusively say it is or isn't a
17 martyrdom video. He will say, for example, a reference to
18 jannah is a reference to paradise which I frequently have seen
19 in martyrdom videos. A reference to a couple of the phrases
20 and terms are the same as terms that he's seen in martyrdom
21 videos. I think he is going to opine that it bears
22 resemblance to martyrdom videos that suggests to him it was
23 likely modeled on one. Although he will concede there are
24 other explanations for it.

25 THE COURT: I am not sure I need to address the

1 merits of your procedural claim. That's really not the sort
2 of testimony I'd permit anyway.

3 MR. DuCHARME: Okay. Then we won't offer.

4 MR. DRATEL: Thank you, Your Honor.

5 THE COURT: All right. Would you bring the jury in,
6 please?

7 We will go 9:30 to 1:00 o'clock tomorrow. I think
8 we are on a pretty good pace here. We are even a little ahead
9 of schedule.

10 Does that sound right to you?

11 MR. DuCHARME: Yes.

12 We may be able to rest tomorrow.

13 THE COURT: Is the defense case going to last more
14 than a day or two?

15 MR. STERN: Not more than a day; not two.

16 THE COURT: All right. So you will be ready to sum
17 up next week. We are missing Monday, obviously. But it
18 sounds like we could get to summations as early as Wednesday.

19 MR. STERN: I think it's possible, yes.

20 THE COURT: Okay.

21 (Jury present.)

22 THE COURT: Sorry to keep you waiting. We have been
23 working.

24 Have a seat, everyone, please.

25 We are ready to resume.

1 Mr. Steinglass.

2 MR. STEINGLASS: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. STEINGLASS:

5 Q Sir, you talked about the clock on the computer that you
6 were asked to work on?

7 A Yes, sir.

8 Q Now, do you know whether the -- this computer, the one
9 you were asked to work on, whether the clock on that computer
10 automatically changes as one moves from one time zone to
11 another?

12 A No, it doesn't.

13 Q But manually the time can be changed?

14 A Yes, it can.

15 Q So the time -- when you referred to the -- your -- I
16 think what is called the Internet browsing history, which is
17 Government Exhibit 619, it has times on it as well as dates?

18 A Yes, it does, sir.

19 Q And the times could be local times in another time zone
20 besides the one we are in, right?

21 A Correct.

22 Q And that might also affect the date, if the time were
23 near midnight, right?

24 A It could.

25 Q Do you know the difference in the time zones between, for

1 example, here in New York and in Kosovo?

2 A Not off the top of my head.

3 Q Now, this same exhibit, 619, the Internet browsing
4 history, this only goes back a certain length of time, am I
5 right?

6 A Correct.

7 Q How far back does it go?

8 A Depends on how much data the user had decided to use to
9 cache that information. That user can change that to whatever
10 he wants. He can save a year's worth of information or he can
11 save three months.

12 Q I'm sorry. My question was not precise enough.

13 For this computer at the time that you were asked to
14 look at it, what was the amount of time that one could go back
15 in the Internet browsing history?

16 A I don't know what the settings were for that.

17 Q What amount of time was covered in the Internet browsing
18 report, which is in evidence as 619?

19 A I don't know off the top of my head. I just provided it
20 with the file.

21 Q I'm sorry?

22 A I just provided the file.

23 Q All right. If I show you a copy of this, would this
24 perhaps help you to see how long a period we are talking
25 about?

1 A Possibly could.

2 MR. STEINGLASS: May I, Your Honor?

3 THE COURT: Yes.

4 Q This is a copy of Exhibit 619. Let me hand this to you,
5 sir.

6 If you would like -- ignore my stickies.

7 Look at the last page.

8 A Okay.

9 Q The last page reflects the oldest entries, is that right?

10 A The Internet history does not. Because it happens to be
11 websites that the user has gone through. If you notice that
12 some of the times have multiple times that the person has gone
13 to this site. Not necessarily in order. That's why they have
14 an expiration date on the actual items that are URLs. So when
15 it hits the expiration date it gets removed out of the
16 Internet Explorer browsing history.

17 Q Is it fair to say that this report that you have in front
18 of you, a copy of 619, covers a certain period of time?

19 A Yes.

20 Q And it ends on August 27th of 2009?

21 A I wouldn't be able to know for sure exactly. Not unless
22 I was able to actually look through the index of that file
23 again and to check to see what the settings were on the
24 Internet Explorer.

25 Q Can't you tell the dates from this paper copy?

1 A Yes, I do see dates going all the way to 9/22 of 2009.

2 Q What is reflected as for September 22nd of 2009, what
3 activity?

4 A An expiration date for one of the files that is here on
5 the front page.

6 Q So this Internet browsing history that we are talking
7 about, this reflects some user who is looking at the Internet,
8 is that right?

9 A Correct.

10 Q So aside from expiration date, does the report there
11 reflect the date or dates when the user looked at certain
12 material?

13 A Yes.

14 Q Is August 27th the latest date that the report indicates
15 the user looked at Internet material?

16 A I would not know unless I went through every page here to
17 verify it. The cover page does show 8/27 of 2009 on three of
18 the sites that he's gone to. But there could be a later one
19 in this pile. I wouldn't know unless I actually went and did
20 an analysis of it.

21 Q We could do that ourselves. We could look at the dates
22 ourselves because it's in evidence, is that right?

23 A Correct.

24 Q Is this report, 619, in -- generally in reverse
25 chronological order, with the most recent date on top?

1 A Not necessarily, no.

2 Q Would you take a look at it and see if it generally is in
3 that reverse order, so that the oldest date is at the bottom?

4 A It does show it in this order here.

5 Q Just go back for a week or so to August the 21st.

6 A It seems to.

7 Q I am referring to the dates of the browsing, not the
8 expiration dates.

9 A Right, yes. It seems to be.

10 Q Thank you.

11 Sir, where there is a file on the computer, the
12 computer in question, the one you worked on, that did not come
13 from the Internet, that -- would the computer reflect certain
14 dates in general relating to non-Internet files?

15 A Yes.

16 Q Such as the date created or downloaded?

17 A Correct.

18 Q Date modified?

19 A Yes, it could.

20 Q Last date accessed, data like that?

21 A Correct.

22 Q Now I want to ask you about something which I am not sure
23 you have seen before.

24 If there is something on this computer in question,
25 a file, not an Internet created file, and you were to be able

1 to look at it, is it possible that you would be able to see
2 data like date created, date modified and last date accessed?

3 A You could.

4 Q Is it correct that sometimes when you -- when you put a
5 time up on the screen to look at it, such as the kind I am
6 talking about, it will actually show you a date?

7 A I don't understand what you mean by that. The file
8 showing me a date? I -- in what kind of reference are you
9 asking me this?

10 (Continued on next page.)

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Booth-cross-Steinglass

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1 CONTINUED CROSS-EXAMINATION

2 BY MR. STEINGLASS:

3 Q When there's a file on a screen, usually it has some kind
4 of a name?

5 A Correct.

6 Q In addition to whatever the name is, there is sometimes
7 the date associated with the file; is that correct?

8 A Yes.

9 Q The date, in general, can reflect something like the last
10 dated accessed?

11 A Correct.

12 Q Or a date created or modified; is that right?

13 A That's right.

14 Q If there's a particular file on this computer you worked
15 on, if we showed you this file on the computer, you might be
16 able to give us some data about the dates; is that right?

17 A Possibly.

18 Q You said that you made a forensic copy of the hard drive;
19 is that right?

20 A Correct.

21 Q A forensic -- I believe that's in evidence; am I right?

22 A Yes, it is.

23 MR. STEINGLASS: Could I have a moment, your Honor?

24 THE COURT: Yes.

25 (Pause.)

Booth-cross-Steinglass

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1 Q Sir, I'm showing you Government Exhibit 601a, little "a."
2 This is a hard drive?

3 A Correct.

4 MR. STEINGLASS: Is it correct, if I may ask, this
5 is a copy of the hard drive in question; is that right?

6 MR. DuCHARME: Yes, it is.

7 Q If we could put this up on a computer, then you might be
8 able to give us some information about a particular file,
9 dates associated with it; is that right?

10 A Possibly, yes.

11 MR. STEINGLASS: I'm not sure if we need to
12 approach on this. Perhaps we could?

13 THE COURT: I wouldn't know, so come on up.

14 MR. STEINGLASS: Thank you.

15 (Continued on next page.)
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Booth-cross-Steinglass

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1 (Side bar.)

2 MR. STEINGLASS: Apparently we don't have a hard
3 drive to put this in, show him. The copy I have, the item in
4 question, for example, the weatherman video, the copy doesn't
5 have, as I understand it, the date I'm talking about. My
6 request would be simply we leave him on call, recall status,
7 if we can't work this out amongst ourselves, stipulate to it.
8 They object to relevance, but that's a separate issue.

9 THE COURT: What's the key? What is it, the date
10 in there?

11 MR. STEINGLASS: Yes.

12 THE COURT: I'll overrule the relevance objection.
13 Is that the only problem?

14 MR. ARIAIL: The problem is what Mr. Steinglass
15 wants to do is play a video to complete this.

16 MR. STEINGLASS: No. I want the date. All I want
17 is the date.

18 THE COURT: Work out a stipulation on the date.
19 Let's move this along.

20 MR. STEINGLASS: Thank you.

21 (Continued on next page.)

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Booth-cross-Steinglass

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1 (Open court.)

2 MR. STEINGLASS: I'll put this on the screen.

3 THE COURT: Face up, please.

4 Q Sir, this Exhibit 810 was shown earlier on your direct
5 examination?

6 A Yes, it was.

7 Q Is there a process in the computer world called cutting
8 and pasting?

9 A Yes, there is.

10 Q Could you briefly describe what that means to cut and
11 paste -- I should say copy and paste.

12 A Cut and paste or copy and paste, what it is is using one
13 document to transfer information to another. You could do
14 that with pictures, graphics. You could copy/paste text.
15 That's what it essentially means, take it from one document,
16 transfer it to another.

17 Q Mechanically, is that generally done, you simply block
18 off the text you want to move, you hit copy, move it some
19 place and you hit paste; is that basically it?

20 A Yes.

21 Q This document, Exhibit 810 appears to have been done in
22 this copying and paste method?

23 A I have no idea.

24 Q Is this document something that in your expert view could
25 have been put on the computer in question by this copy and

Booth-cross-Steinglass

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1 paste method?

2 A There's no way of me knowing that.

3 THE COURT: No way of knowing it could have been or
4 no way of knowing whether it was?

5 THE WITNESS: Was or could have.

6 Q Sir, your training and expertise includes dealing with
7 computerized material from a camera; is that correct?

8 A No.

9 Q Didn't you mention cameras in talking about your
10 expertise?

11 A Well, I said as a forensic examiner, we can but I'm not a
12 camera expert. In general, some forensic examiners can
13 examine cameras.

14 Q Is it within your knowledge and expertise that when
15 something that comes from a camera is on a computer, you end
16 up with, can end up with dates similar to the type of dates I
17 mentioned before, date of access or date modified or date
18 created?

19 A Yes.

20 Q I'm going to show you Exhibit 701 C in evidence.

21 THE COURT: Is this coming out of the podium
22 laptop?

23 MR. DuCHARME: It is, your Honor.

24 (Pause.)

25 THE COURT: Would you like to see it?

Booth-cross-Steinglass

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1 MR. STEINGLASS: I appreciate Mr. DuCharme helping
2 me. Apparently if I ask your Honor to publish or to show the
3 witness, whichever you think best, at least the witness will
4 be able to see the names and dates on certain files that are
5 in evidence.

6 THE COURT: Who would you like to see whatever
7 you're going to put on the screen?

8 MR. STEINGLASS: The witness and the jury. This
9 refers to 701 A, B and C.

10 THE COURT: You're sure it's up on the machine?
11 I have this linked into the laptop but nothing is coming up.

12 (Pause.)

13 THE COURT: Something happened. Here we go.

14 You have to click on something there. We'll see
15 whatever you open up.

16 MR. STEINGLASS: I'm not interested in opening it
17 up, your Honor, as I am in the file --

18 THE COURT: You're interested in this screen
19 itself?

20 MR. STEINGLASS: Exactly.

21 THE COURT: Then here it is. Everybody can see it.
22 You can't? I'm the only one who can see it? I don't have
23 room for you all up here.

24 (Pause.)

25 THE COURT: Some jurors don't have it. We need

Booth-cross-Steinglass

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1 help.

2 (Pause.)

3 THE COURT: The jurors have it? Yes. Everybody
4 has it? Good.

5 THE COURT: The witness doesn't have it.

6 (Pause.)

7 Q You have it?

8 A Yes, I do.

9 Q 701 C, you see that item?

10 A I do.

11 Q Referred to as a video clip?

12 A AVI file; yes, it is.

13 Q AVI means what?

14 A Video file.

15 Q The next column over, digital size, broken down to
16 kilobytes?

17 A Yes.

18 Q Then there's a date, under date modified August 8, 2009?

19 A Correct.

20 Q The time, 8:00 a.m.?

21 A Correct.

22 Q Then the duration, a little over two minutes and four
23 seconds; is that right?

24 A Correct.

25 Q I'll skip the dimensions.

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1 Does this indicate that this 701 C file was last
2 modified, appears to have been last modified on August 8th of
3 2009?

4 A That's what the file is saying.

5 Q Similar information for 701 B, appears to have been last
6 modified on August 8th of 2009?

7 A Yes, sir.

8 Q Similar with 701 A, last modified on July 25th, 2009?

9 A Correct.

10 MR. STEINGLASS: No further questions, your Honor.

11 MR. ARIAIL: Nothing.

12 THE COURT: Thank you. Any redirect?

13 MR. ARIAIL: No, your Honor.

14 THE COURT: You're excused. Have a good day E V A

15 N F. K O H L M A N N

16 having been duly sworn/affirmed, was examined
17 and testified as follows:

18 THE CLERK: Please state your name, spell it for the
19 record.

20 THE WITNESS: My name is Evan F. Kohlmann,
21 K-O-H-L-M-A-N-N.

22 THE WITNESS: Do you mind if I stand up?

23 THE COURT: Not at all.

24 MR. DuCHARME: May I inquire?

25 THE COURT: He was asking me earlier because of a

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1 physical condition. I said yes. I forgot.

2 DIRECT EXAMINATION

3 BY MR. DuCHARME:

4 Q Good afternoon.

5 A Good afternoon.

6 Q What do you do for a LIVING?

7 A I work as an international terrorism consultant.

8 Q How long have you been working in the field of
9 international terrorism?

10 A I began doing work in this field in February of 1998.
11 Obviously, I'm continuing to work up until today.

12 Q Do you have a college degree?

13 A I do.

14 Q Where did you do your undergraduate studies?

15 A I have a B S F S, a bachelor in science foreign service
16 from the Edmund A. Walsh School of Foreign Service at
17 Georgetown University, Washington, D.C.

18 Q Tell us briefly what the focus of the curriculum was
19 during your undergraduate study.

20 A My undergraduate degree focused on international politics
21 and international security studies. I also gained a
22 certificate in Islam and Muslim Christian understanding.

23 Q What's your degree in?

24 A My degree is in international politics with a focus in
25 international security studies and I concluded my degree with

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1 an honors thesis on the subject of the Arab Afghans.

2 Q What was your thesis about?

3 A The title of my thesis was The Legacy of the Arab
4 Afghans, a Case Study. In essence what I did, I looked at the
5 conflict that took place in Afghanistan the end of the late
6 1980's. I traced the paths of foreign fighters who went to
7 Afghanistan to join the Mujahideen or holy warriors there
8 fighting the Soviet Union. I traced these individuals as they
9 went to various other countries afterwards and trying to
10 understand why it was that some of these individuals
11 experienced great success after their graduation from the
12 combat in Afghanistan, whereas some did not.

13 Q You have a graduate degree?

14 A I do indeed.

15 Q What's that?

16 A I have a J D or juris doctor from the University of
17 Pennsylvania Law School.

18 Q Did your legal studies touch on international terrorism
19 at all?

20 A They did.

21 Q How so?

22 A In addition to taking terrorism classes in law school
23 itself, I also attended classes on Afghanistan and Islamism in
24 the Graduate School of Arts and Sciences at the University of
25 Pennsylvania.

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1 Q Are you familiar with the something called the
2 Investigative Project?

3 A Yes.

4 Q What is that?

5 A The Investigative Project is a Washington, D.C.-based
6 think tank and policy group which was founded in 1995 by a
7 former C N N journalist. The purpose of the project is to
8 serve as a counterterrorism research watchdog group.

9 Q Did you work there?

10 A I did.

11 Q What did you do?

12 A I began in February of 1998, actually as an intern when I
13 was still in college, eventually worked my way up to become a
14 senior analyst of the Investigative Project. That was my
15 final title there.

16 Q Can you briefly describe what you did there as a senior
17 terrorism analyst?

18 A Yes, as a senior analyst at the Investigative Project, my
19 job was to research communications, financing and
20 communications of international terrorist organizations, most
21 specifically Al Qaeda and Al Qaeda affiliate organizations, in
22 other words other Jihadi-style movements around the world that
23 aspire to follow the same path as Al Qaeda.

24 In order to do this, I collected what is known as
25 open source information. Open source information means

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1 information that comes from non-classified sources; in other
2 words, interviews, video recordings, newspaper articles, me
3 going and witnessing something, web sites but we weren't using
4 information like intelligence reports, weren't using
5 information gleaned from classified government sources; in
6 other words using open information but information that might
7 not be that easy to find.

8 Q Are you currently employed?

9 A I am.

10 Q How are you currently employed?

11 A I currently am a senior partner with Flashpoint Global
12 Partners which is a company that I have founded here in
13 New York City, Flashpoint is a security consulting firm which,
14 once again, provides specific research and analysis on
15 communication, financing and recruitment of foreign terrorist
16 organizations.

17 Q Do you run that firm?

18 A I do.

19 Q How long have you run your firm?

20 A I have run my firm -- my firm began actually back in
21 2007, January of 2004, expanded into its current state about a
22 year and a half ago.

23 Q You operate a web site?

24 A I do.

25 Q Could you please tell the jury what your web site does?

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1 A The purpose of my web site, obviously, is to advertise
2 the services we offer, but more importantly, what we use our
3 web site for is a clearing house for information about
4 terrorist organizations. Obviously, we're not the only ones
5 conducting this kind of research. There are policy makers,
6 academics, other researchers like us who are doing the same
7 kind of investigation. In order to provide these various
8 individuals with the same kind of information we're looking
9 at, we put out excerpts, translated parts we're working on on
10 our web site in order to try to contribute to scholarly debate
11 and discussion about these issues.

12 Q You said before that you worked with open sources?

13 A That's correct.

14 Q Can you provide some examples of the different types of
15 sources you work with?

16 A Sure. In the world of open sources, you have primary
17 sources, secondary sources and you have tertiary sources. A
18 primary source would be going out to a battlefield,
19 interviewing a terrorist leader face-to-face. The world
20 international terrorism primary sources could be sometimes
21 hard to come by.

22 In order to supplement our primary sources, we turn
23 to secondary sources. In other words, if we can't go out and
24 meet Osama bin Laden, we'll collect all Osama bin Laden's
25 recordings, collect all his magazines, all the web sites he's

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1 affiliated with. In other words, we'll study the best sources
2 that are available that tell us in very detailed information
3 about the communications, recruitment and financing of groups
4 like Al Qaeda.

5 (Continued on next page.)
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1 BY MR. DuCHARME:

2 Q Have you ever personally interviewed anyone who was a
3 terrorist or alleged to be a terrorist?

4 A Yes. I have interviewed numerous such individuals.

5 Q Can you give us a couple of examples?

6 A Sure. In 2001 I interviewed an individual by the name of
7 Abu Hamza Al-Masri. Abu Hamza is a representative of Al Qaeda
8 and has been convicted in the United Kingdom of
9 terrorism-related offenses.

10 I have also interviewed Dr. Mohammed Al-Massari and
11 Dr. Asaad Al-Fiquih, both of whom have been named by the U.S.
12 government as SDGT, Specially Designated Global Terrorists
13 rivet. I have interviewed Abdullah Anas, the son-in-law of a
14 cofounder of Al Qaeda and an individual who fought in
15 Afghanistan during the late 1890's.

16 I have interviewed individuals who are cooperating
17 witnesses in terrorism cases, including Americans who have
18 attended training camps abroad in places like Pakistan.
19 Individuals such as Randall Royer, etcetera.

20 Q You mentioned that you looked at open source material
21 like Al Qaeda videos. Are there other types of documents or
22 electronic materials that you reviewed?

23 A Yes. We have a very, very large database full of
24 materials. We collect every kind of valuable open source
25 material, everything from a magazine, an interview, a video,

Kohlmann - direct - DuCharme

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1 an audio recording, documents, books, you name it. Any kind
2 of material that we can get at that helps shed light into the
3 patterns of these organizations.

4 Q What type of products do you produce?

5 A We take all this material and we distill it down into a
6 variety of different products. Sometimes we're asked to
7 assist with media companies when they are making documentaries
8 about Al Qaeda. Sometimes we are asked to produce expert
9 reports, very frequently we're asked to produce expert
10 reports. We take material and we distill it down into
11 unclassified memoranda that makes these issues very simple and
12 easy to understand.

13 Q Have you worked with U.S. government agencies previously?

14 A Yes, I have.

15 Q Can you give us just some examples of the U.S. government
16 agencies that you have worked?

17 A Yes.

18 I have worked with the U.S. Department of Justice,
19 the Federal Bureau of Investigation, the department of
20 defense, the U.S. Treasury Department, the U.S. State
21 Department, the Department of Homeland Security and various
22 other branches of the U.S. government.

23 Q How about international organizations?

24 A Internationally I have worked with the New Scotland Yard
25 counterterrorism section. I have worked with Crown

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1 Prosecution Service in the United Kingdom. I have worked with
2 Central Scotland Police. I have worked with the Australian
3 Police as well as the Commonwealth Prosecutor's office in
4 Australia. I have worked with international prosecutors and
5 police in Bosnia Herzegovina. I have worked with the supreme
6 of the Bosnia. I have worked with the Danish police
7 intelligence organizations and we're currently working with
8 Norwegian police and prosecutors.

9 Q Have you worked with any media organizations?

10 A I am an on air analyst and consultant for MSNBC.

11 Q Do you know how to read and write in Arabic?

12 A I didn't study it formally. In studying Islam you have
13 to learn some Arabic. While I know a tremendous amount of
14 Arabic words, I don't speak it fluently.

15 Q Have you written any books or articles during the course
16 of your career?

17 A Yes.

18 Q How about books? What books have you written?

19 A In 2004 I wrote a book entitled Al Qaeda Jihad in Europe,
20 after Bosnia, a network which traced patterns and paths of the
21 foreign fighters from Afghanistan in the late 1980 as they
22 traveled to the Balkans in the late 1990's, trying to
23 understand the role they had in the Balkan wars of the 1990's.

24 Q Has that book been adopted in any academic programs?

25 A Yes. It was published by a university publisher and the

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1 book itself is used frequently in institutions such as Harvard
2 and Johns Hopkins School down in D.C., pretty much on a
3 variety of different graduate levels in social-science
4 institutions.

5 Q Can you give us an estimate of the number of articles
6 that you have written on international terrorism over the
7 years?

8 A Its significant. In a given year I write anywhere
9 between five and ten articles. If you estimate on that basis,
10 I would say it would be upwards of 50, 60, 70 different
11 articles that have been published, something like that. It's
12 been significant.

13 Q Do you work in any nonprofit organizations?

14 A As a matter of fact we do, yes.

15 Q Can you tell us about that?

16 A Sure. I work as a consultant on behalf of the NEFA
17 Foundation, 911 Financiers, this is a 501c3, a nonprofit
18 organization here in the United States, tax exempt. The
19 purpose of NEFA is to promote nonprofit counterterrorism
20 research with the idea of providing assistance to policy
21 makers, law enforcement, academics everyone and anyone with an
22 interest in the very detailed work of counterterrorism.

23 Q Prior to this case, Mr. Kohlmann, have you been retained
24 as an expert witness in other case?

25 A Yes, I have.

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1 Q In those instances did you work as a consultant with the
2 U.S. government?

3 A Some of them, yes.

4 Q Testifying as an expert witness?

5 A I did both.

6 Q What types of things would you do?

7 A I have done everything from conducting a forensic
8 examination of seized hard drives, in other words, when hard
9 drives of people's computers are seized in criminal
10 investigations I am sometimes asked to go through those hard
11 drives and identify material that is relevant to international
12 terrorist organizations, international terrorism in general.

13 I am asked to take a look at evidence and try to
14 understand or explain how that evidence fits into the world of
15 international terrorism.

16 Sometimes I'm merely approached and asked can you
17 please explain to us the history of a particular Al Qaeda
18 faction or can you explain to us travel patterns in and out of
19 Somalia by individuals seeking to join terrorist
20 organizations. Those are the kind of questions that we get
21 asked.

22 Q Have you been qualified as an expert previously in
23 federal district courts like this one?

24 A Yes, I have.

25 Q About how many times?

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1 A I have been qualified I believe on 16 separate occasions
2 in U.S. Federal Court and I believe I have testified 15 times.

3 Q How about in military commission trials?

4 A In military commissions I have been qualified three times
5 and I have testified twice.

6 Q And how about international courts?

7 A Internationally I have testified eleven different times
8 in courts ranging from Australia to Bosnia to the United
9 Kingdom, Scotland, Australia.

10 Q Has any judge ever not permitted you to testify as an
11 expert?

12 A In one case here in 2005 my testimony was excluded.

13 Q As part of your research, Mr. Kohlmann, do you
14 investigate terrorist organizations on the internet?

15 A Yes, I do.

16 Q When did you start doing that, roughly?

17 A It was a key component of my research from the beginning.
18 Given my age, and given my generation, it's kind of natural
19 for us when we are looking for information, in addition to the
20 traditional sources, we look to the nontraditional sources,
21 new sources.

22 The internet has been an area that we have been
23 looking at to try to harvest information. It's an area that a
24 lot of conventional scholars overlook. The internet has
25 always been an area that we have focused on.

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1 Q You have already told us about the information, the
2 variety of information that you have collected. How,
3 specifically, do you archive that?

4 A We have copies of every single video recording, every
5 single magazine, every single communique issued by any Al
6 Qaeda faction or any kind of jihadi-style faction that you can
7 think of for the last seven or eight years. We have
8 everything stored in a database where we can pull up -- say if
9 you need a communique from January 2001 from a particular
10 group. In five minutes I can get you the original copy of it,
11 a translation. I can tell you where it comes from, how it got
12 there. So we have basically a complete database. We also
13 data mine social networking forums used by extremists and we
14 collect ordinary messages which are posted on there.

15 So we're also able to through ordinary messages that
16 are posted by extremists that are posted on the web looking
17 for hints of terrorist activity.

18 Q About how big is your database?

19 A Our database is approximately think to four terabytes in
20 size. An terabyte thousand gigabytes. A gigabyte is a
21 thousand megabytes. With that amount of space you are talking
22 about literally millions of the files, everything from video
23 recordings, documents, translations, PDF fails, you name it.

24 Q In the course of your work have you become familiar with
25 the concept of the jihad?

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Kohlmann - direct - DuCharme

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1 A Yes.

2 Q How did you become familiar with that concept?

3 A Jihad is a central concept in the Muslim jurisprudence,
4 in Islam.

5 Q Do you have an understanding of something called the
6 global jihadist movement?

7 A Yes.

8 Q What is that?

9 A The global jihadist movement is a movement that currently
10 exists in the world today among people who take the word of
11 jihad and see it in a violent sense. Jihad can be --

12 Q I maybe led you astray, Mr. Kohlmann?

13 How did you become familiar with this global
14 jihadist movement?

15 MR. DRATEL: Can we have a sidebar, your Honor?

16 THE COURT: No. Let's just break for the day.

17 MR. DuCHARME: Your Honor, I was just about to offer
18 him as an expert.

19 THE COURT: Any objection to that?

20 MR. DRATEL: Not to that.

21 THE COURT: I'll receive him as an expert.

22 MR. DuCHARME: Specifically, we would offer him as
23 an expert in the international jihadist movement, more
24 specifically, the use of internet or computer media or
25 electronic media, in connection with that.

1 THE COURT: Any objection?

2 MR. DRATEL: No, your Honor.

3 THE COURT: We'll deal with the disagreements you
4 had outside the presence of the jury.

5 Would you like a little four-day audit as to why we
6 are in this case? The jury?

7 We're a little ahead of schedule. We're going to
8 sit by the way 9:30 to 1:00 tomorrow. You have a half day.
9 Start your holiday weekend early.

10 We're going to take a three-day weekend, resume
11 again on Tuesday. None of this can ever be carved in stone
12 because it's not a science. I think you might hear summations
13 possibly as early as Wednesday, maybe more likely Thursday.
14 That's where we're at. Okay.

15 Now, have a nice evening. Don't discuss the case.
16 I saw on line a reference to the case. I'm not sure what it
17 was. I have not looked at it. Make sure you keep yourselves
18 insulated from any information about the case or any subject
19 matter anywhere close to the case. Obviously, don't go
20 looking for such information. No blogging. You know this
21 drill already. No blogging, no tweeting. No communicating
22 with others about the case or your service as a juror on the
23 case.

24 The reason to respect that principle that I told you
25 is so important, that when it comes time to deliberate it's

1 important that you base your verdict solely on the evidence in
2 the case and not be tainted by information from outside the
3 courtroom.

4 Okay. So we'll see you tomorrow. Have a nice
5 evening. Safe home. Don't discuss the case.

6 All rise.

7 (Jury excused.)

8 THE COURT: Is there some dispute that you had in
9 mind.

10 MR. DRATEL: May I come up?

11 THE COURT: Yes.

12 MR. DRATEL: My problem is twofold. One is the
13 concept -- global jihadist movement is a concept and it's
14 really his concept. It's not a concept that's recognized in
15 the world. There's no incorporation. It's not even like an
16 organized crime family or an association in fact or anything
17 like that. It's just sort of an intellectual creation.

18 And I'm concerned that discussion in that context or
19 giving it labels like that will be a substitute for the jury
20 for what's really required in this case, which is a 956(a)
21 conspiracy, not some worldwide movement that people who have
22 never met each other, from all different countries, that
23 people say because they believe in the same thing that it's a
24 movement. That's not a substitute for a 956(a) conspiracy
25 which the government has to prove.

1 And I'm concerned about that just from historical
2 cases and the way he's testified in other cases. So I don't
3 want it to get into that notion that somehow that exists as a
4 coherent entity and that he's part of it and that that's going
5 to be enough for them, not that he's going to say that, but
6 that it's going to act that way by the time we're done.

7 THE COURT: Well, your remarks incorporate a number
8 of different areas. One is his expert testimony about a
9 subject that might -- that I think is probably beyond the ken
10 -- as the case law phrase it -- of the average juror.

11 A second one is the extent to which this defendant
12 might have been part of that. I'll be ultrasensitive to any
13 testimony that gets close to that subject.

14 I am not sure exactly what your objection is
15 precisely. The testimony about the global jihadist movement I
16 don't find particularly objectionable. This might be a good
17 time for us to discuss this, because we have not yet really.
18 I think the real rub in testimony of this sort is when an
19 expert -- you don't have to agree with this and if you
20 disagree with it you'll tell me -- is when an expert strays
21 from informing the jury about a phenomenon about which he's
22 got specialized training, indisputably, specialized training
23 and knowledge and expertise, strays from testifying about that
24 thing, here, the global jihadist movement.

25 Then, on the other hand, testimony about the

1 evidence in the case and I am acutely sensitive to anything
2 that looks like it might be perceived by a lay jury as expert
3 testimony that the defendant is guilty.

4 So you may sensitize me to this -- I'm not concerned
5 about the testimony he's given thus far. I don't know how far
6 you intend to go, Mr. DuCharme, with the particular evidence
7 in this case.

8 MR. DuCHARME: I would like to front it for you. I
9 have turned over to Mr. Dratel my direct script. There
10 shouldn't be any surprises here. What we intend to elicit
11 from Mr. Kohlmann is a number of statements. The first is
12 essentially just the existence in a very, very simple
13 straightforward way that Al Qaeda exists, what the word Al
14 Qaeda means, how it operates. The same for Al-Shabaab. We'll
15 offer through him the Al-Shabaab designation on the SDTG list.
16 The same for the fact that there are these Chechnyan groups.
17 That's going to be limited testimony. The general framework.
18 Jihadists from three different parts of the world, Somalia,
19 Pakistan, Afghanistan and Chechnya.

20 Then we expect to ask Mr. Kohlmann about the results
21 of what he was asked to do in this case, which was we provided
22 him with a copy of the defendant's hard drive and we asked him
23 to go through it and look for things that were significant to
24 him in the context of jihad or assimilating into a jihadist
25 group and what he did is he identified for us several videos

1 which he tells us are useful for assimilating into this closed
2 and specialized culture.

3 And what he'll say is, for example, some of the
4 Osama bin Laden videos are sort of classics and that a person
5 who is assimilating to a jihadist group is expected to fellow
6 them, expected to be able to quote them and discuss them
7 amongst their peers.

8 And then he's going to point to specific documents
9 that he found on the hard drive, Word documents which
10 incorporate direct quotations from some of those classic
11 videos.

12 We've got those on the board. Judge I can flip
13 around and show you. One of them for a Nasheed, a jihadist
14 song. What Mr. Kohlmann found is a Word document that shows
15 the lyrics of this jihadist song in Arabic, spelled
16 phonetically, and in English. We will later argue to the jury
17 that what he's doing is he's learning these Nasheeds. We're
18 going to argue -- we're not going to ask Mr. Kohlmann to
19 testify to this -- we're going to argue that the reason he's
20 learning the Nasheeds because it's going help him assimilate
21 into a jihadi group or a foreign terrorist organization when
22 he gets there.

23 He's also going to show the jury another document
24 that he found, which is in evidence as Government's Exhibit
25 810, and that is a document where he's listed Osama bin Laden

1 quotes from videos that he has saved on his hard drive. We're
2 going to put those in through him and we expect to later
3 argue, again, its probative of his state of mind. He's not
4 only casually surfing these things. He's reading them. He's
5 studying them and he's adopting them and we're going to ask
6 Mr. Kohlmann are these things useful to someone who is trying
7 to assimilate into a jihadist group or a foreign terrorist
8 organization.

9 We expect that he will say, yes, that learning these
10 things and adopting these things helps a Westerner come to
11 Somalia or Afghanistan or Chechnya and essentially sit down
12 around the campfire and be accepted into group because he can
13 sing the songs and quote the movies and issue the quotations.

14 That's where we're going.

15 THE COURT: What is it about that that requires
16 expertise though? I would think the jury would know this
17 stuff would facilitate the assimilation of the defendant into
18 a jihadist group.

19 MR. DuCHARME: I think it's just the context. For
20 example, the statement of the Humma video. There's been
21 testimony already elicited that there are thousands of videos
22 on YouTube and anybody can stumble across them. The
23 significance here is what the defendant has done is he has
24 picked the ones that are most or some of most recognized among
25 the groups that we allege he is trying to get into. He has

1 picked the ones that will be most recognizable to Al Qaeda.
2 Nasheed, the Osama bin Laden quotes and certain Somalia
3 material that will allow him to assimilate into Al-Shabaab and
4 we're going to argue that's probative of his intent do those
5 things. He put into effort into that.

6 What Mr. Kohlmann will say, these some of the ones
7 that will be important. These aren't the silly ones that are
8 made by home-grown jihadists that they just post themselves on
9 YouTube. These are the classic examples, As Sahab, that this
10 is part --

11 THE COURT: Excuse me one second.

12 MR. DuCHARME: Sure.

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1 THE COURT: Excuse me one second.

2 (Pause.)

3 Juror number 12, our pregnant juror, is very sick,
4 including vomiting, back in the jury room.

5 Has she requested that she be excused? Or this is
6 just happening back there?

7 THE CLERK: She is insinuating. She kept saying you
8 knew she was pregnant and she is not feeling well. The whole
9 day she has been in and out of the restroom whenever she
10 could.

11 THE COURT: If you could please ask her whether she
12 means she would like to be excused from jury service.

13 THE CLERK: Okay.

14 THE COURT: Okay.

15 MR. DuCHARME: Aside from that, judge, I will just
16 define certain Arabic terms.

17 THE COURT: I don't intend to go back and witness
18 for myself what Ilene described for me. I intend to excuse
19 this woman.

20 Does anybody object?

21 MR. DuCHARME: I can't imagine we do.

22 No objection from the government.

23 MR. DRATEL: No.

24 THE COURT: All right.

25 THE CLERK: She says yes, she can't sit in here

1 anymore.

2 THE COURT: All right. I will try to take that in
3 the best possible light. Tell her her application --

4 MR. DRATEL: It might have been the fire drill.

5 THE COURT: Tell her her application is granted.
6 Good luck with the rest of her life, with her pregnancy, with
7 everything. Just tell her she is excused.

8 THE CLERK: Yes.

9 THE COURT: All right. Do you want to be heard?

10 MR. DRATEL: Your Honor, what Your Honor said was
11 very much what Judge Carr said in the Amawi case. The context
12 of what -- what kind of expertise is necessary. Many of these
13 videos and other -- the documentary stuff speaks for
14 themselves. They don't require the additional context of what
15 they are used for necessarily.

16 This witness has testified a lot and he has
17 testified in many different forums and I am also concerned
18 about the fact that -- I appreciate what the government has
19 done in terms of trying to keep him narrow because we have
20 talked about this. They have adjusted some of the conclusions
21 that he wrote in his report and made them much more palatable.

22 But at the same time he's gone a lot further in a
23 lot of cases. So he needs a short leash in that regard and I
24 know the government is trying but that's also something that
25 we are very concerned about in terms of when he goes beyond

1 that.

2 Just to get back to the global jihadist movement, my
3 problem is there is no definition of that other than the one
4 that he has that's out there. There is no -- you can't find a
5 definition that is agreed upon in the world. I am just
6 concerned that when the jury hears global jihadist movement
7 and if he uses it as a synonym for people who join terrorist
8 organizations or is it people who sympathize with jihad or is
9 it people who believe in that or people who investigate it
10 or -- I don't mean investigate it, counterterrorism, but
11 investigate it on their own for the question of whether they
12 want to do something about it.

13 It's too amorphous a -- it's too amorphous a term I
14 think to include every one and anyone who might be
15 in -- wherever the penumbra is on that. I am just concerned
16 that's going to include Mr. Kaziu in the jury's eyes when in
17 fact that's not what this case is about.

18 THE COURT: We will play it as it goes. I will
19 think about it some more tonight. There is one thought that I
20 have that I will share with you. That is, I do think -- this
21 issue about these are generally accessible materials is
22 already part of the case. I don't think -- to the extent that
23 there is expert testimony that these are the main ones for
24 these organizations, I think that's fair ground for the
25 government.

1 The thought I want to share with you, Mr. DuCharme,
2 is I want that separated as much as possible from the discrete
3 facts of this case and by that I mean this is just so that the
4 order of presentation -- I don't want to create the impression
5 before the jury -- because juries get confused by experts -- I
6 don't want to create the impression that is risked when an
7 expert takes the laptop that's taken from the defendant and
8 flips through it before the jury and says, oh, here is a main
9 text for Al Shabaab or here is the main ones that someone
10 assimilating himself into Al Qaeda really needs to know. The
11 way that gets presented matters, in my judgment.

12 So what I would like you to do is structure his
13 testimony as best you can to have him testify about those main
14 texts, whatever they are, in a manner that is distant from the
15 defendant as best as possible. I am not articulating this
16 very well. I believe you understand my point.

17 MR. DuCHARME: I do understand.

18 THE COURT: To finish the thought, later on if you
19 want to argue that here is what's on his computer, you have
20 heard that although there is lots of generally available
21 stuff, this is the main stuff. You make that argument.

22 But to the extent it comes from him in the manner in
23 which the testimony is presented, I think it matters. I want
24 you to avoid that.

25 MR. DuCHARME: Okay. Here is the challenge for us,

1 Your Honor. The materials that we are going to show through
2 Evan Kohlmann -- he's the one who found them on the hard
3 drive. So up to this point, there has been no testimony that
4 these were the items found on the defendant's laptop. I
5 suppose -- that sounds like the sensitivity, that sounds like
6 what you want to us avoid.

7 I suppose what we can do is, as long as there is not
8 going to be any objection from the defense, is that after he
9 testifies, through the case agent, our next witness, we can
10 just put them in front of her and say where did these come
11 from. She will say those came from the defendant's laptop.

12 THE COURT: There won't be a problem with that.

13 MR. DRATEL: Yes.

14 THE COURT: Someone might argue that this elevates
15 form over substance but I don't think so, not the way jurors
16 tend to hang on experts. I would like you to do it that way.

17 MR. DuCHARME: Okay.

18 THE COURT: I will think about it some more. If I
19 have further thoughts, other than I am sensitive to your
20 concerns and I will rule on objections as we go, I will share
21 them with you before we start tomorrow.

22 MR. DRATEL: Thank you, Your Honor.

23 MR. DuCHARME: I understand, Your Honor.

24 THE COURT: All right?

25 MR. DRATEL: Great.

1 THE COURT: Good night.

2 MR. DRATEL: Good night.

3 (Recess taken until 9:30, July 1, 2011.)

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1 I N D E X

2 W I T N E S S E S:

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4 S E L E J M A H H A D Z O V I C

5 DIRECT EXAMINATION 462

6 REDIRECT EXAMINATION 623

7 629

8 Scott Holmes

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10 CROSS-EXAMINATION 645

11 BY MR. DRATEL

12 650

13 B R I A N S C O T T B O O T H

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15 BY MR. ARIAIL

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